

Exhibit 15

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA A. PHILIP RANDOLPH
INSTITUTE and ACTION NC,

Plaintiff,

vs. CASE NO. 1:20-cv-00876

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,
Defendants.

VTC 30(b)(6)

DEPOSITION OF: THE NORTH CAROLINA STATE BOARD OF
ELECTIONS

BY: PAUL COX
(Appearing by VTC)

DATE: May 8, 2023

TIME: 11:05 a.m.

LOCATION: Raleigh, NC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Susan M. Valsecchi, Registered
Professional Reporter, CRR
(Appearing by VTC)

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14 ALSO PRESENT VIA VTC:
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16
17 (INDEX AT REAR OF TRANSCRIPT)
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1 THE COURT REPORTER: The attorneys
2 participating in this deposition acknowledge
3 that I am not physically present in the
4 deposition room and that I will be reporting
5 this deposition remotely.
6 They further acknowledge that in lieu
7 of an oath administered in person, I will
8 administer the oath remotely.
9 The parties further agree that if the
10 witness is testifying from a state where I
11 am not a notary that the witness may be
12 sworn in by an out-of-state notary.
13 If any party has an objection to this
14 manner of reporting, please state it now.
15 [NO RESPONSE]
16 THE COURT REPORTER: Hearing none, I
17 will proceed.
18 Mr. Cox, would you please raise your
19 right hand to be sworn. Do you solemnly
20 swear to tell the truth, the whole truth,
21 and nothing but the truth, so help you God?
22 THE WITNESS: I do.
23 PAUL COX
24 being first duly sworn, testified as follows:
25 EXAMINATION

Page 5

1 BY MR. LUNDQVIST:
2 Q. Good morning, Mr. Cox.
3 A. Good morning.
4 Q. I'm Jacob Lundqvist. I'm with Simpson,
5 Thacher, and Bartlett, and we, along with cocounsel
6 from the Southern Coalition for Social Justice,
7 represent Plaintiffs in this action.
8 Could you please state your full name
9 and address for the record.
10 A. Paul Cox, 316 North Boundary Street,
11 Raleigh, North Carolina.
12 Q. And Mr. Cox, have you ever been deposed
13 before?
14 A. Nope.
15 Q. It's an exciting day for all of us.
16 I'm going to go through a few ground rules. I
17 suspect they will sound familiar, but just bear
18 with me.
19 Mr. Cox, you just took an oath to tell
20 the truth today, which has the same effect and
21 potential penalties as if you were testifying in a
22 court before a judge or a jury.
23 Do you understand that?
24 A. Yes.
25 Q. I will ask you questions, and you

<p style="text-align: right;">Page 6</p> <p>1 should answer to the best of your ability. If</p> <p>2 there's anything I ask that you do not understand,</p> <p>3 please let me know, and I will rephrase the</p> <p>4 question; otherwise, I will assume that you have</p> <p>5 understood the question as posed.</p> <p>6 Does that make sense?</p> <p>7 A. Yes.</p> <p>8 Q. At some point during the deposition</p> <p>9 your counsel may object. It's for the record. And</p> <p>10 you should still answer the question unless you're</p> <p>11 specifically instructed not to by your counsel.</p> <p>12 Do you understand that?</p> <p>13 A. Yes.</p> <p>14 Q. And if you would like to take a break,</p> <p>15 just let me know, and we'll certainly accommodate</p> <p>16 that; but if there is a question pending, I'll just</p> <p>17 ask for an answer to that question before we take</p> <p>18 that break.</p> <p>19 Does that make sense?</p> <p>20 A. Yes.</p> <p>21 Q. Is there any reason why you can't give</p> <p>22 truthful and complete testimony today, sir?</p> <p>23 A. No.</p> <p>24 MR. LUNDQVIST: Great. I am going to</p> <p>25 mark an exhibit as Exhibit 1. It should be</p>	<p style="text-align: right;">Page 8</p> <p>1 changes, a clean version. I will be referring to</p> <p>2 the topics as set forth on Page 6 and thereafter.</p> <p>3 Does that make sense?</p> <p>4 A. Yes.</p> <p>5 Q. And before we dive into the topics</p> <p>6 specifically, Mr. Cox, I want to ask what did you</p> <p>7 do to prepare for today's deposition?</p> <p>8 A. I spoke with the other members of the</p> <p>9 legal team at the State Board of Elections. I</p> <p>10 spoke with Mr. Martucci, the chief investigator for</p> <p>11 the State Board. I spoke briefly with the</p> <p>12 executive director, Karen Brinson Bell. I spoke</p> <p>13 with former general counsel Josh Lawson by phone.</p> <p>14 I spoke with former general counsel Katelyn Love by</p> <p>15 phone.</p> <p>16 I got a readout of notes of the</p> <p>17 conversation that counsel had -- counsel and</p> <p>18 Mr. Martucci had with Brad Neesby, the former chief</p> <p>19 information officer for the State Board of</p> <p>20 Elections.</p> <p>21 I reviewed a number of documents,</p> <p>22 including the State Board's investigations policy,</p> <p>23 the 2017 audit report, a number of other documents</p> <p>24 related to audits that the State Board conducts as</p> <p>25 a routine matter.</p>
<p style="text-align: right;">Page 7</p> <p>1 available. It is a Notice of Deposition.</p> <p>2 (EXHIBIT 1, April 19, 2023, Notice of</p> <p>3 Deposition, was marked for identification.)</p> <p>4 BY MR. LUNDQVIST:</p> <p>5 Q. Do you have that in front of you, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Is this the notice pursuant to which</p> <p>8 you are appearing here today?</p> <p>9 A. Yes.</p> <p>10 MR. LUNDQVIST: And I am going to</p> <p>11 quickly introduce a second exhibit. It</p> <p>12 should be available. It is a 10-page</p> <p>13 document.</p> <p>14 (EXHIBIT 2, Testimony Topics, was</p> <p>15 marked for identification.)</p> <p>16 BY MR. LUNDQVIST:</p> <p>17 Q. Do you have that in front of you, sir?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Cox, do you understand that this</p> <p>20 document reflects the scope of testimony you have</p> <p>21 been asked to provide here as negotiated between</p> <p>22 counsel for Plaintiffs and counsel for Defendants?</p> <p>23 A. Yes.</p> <p>24 Q. And what I did for simplicity is I</p> <p>25 added in, after these few pages with tracked</p>	<p style="text-align: right;">Page 9</p> <p>1 I reviewed some pages of a transcript</p> <p>2 of a deposition that the executive director gave in</p> <p>3 the Community Success Initiative case.</p> <p>4 That covers most of the waterfront,</p> <p>5 that I recall.</p> <p>6 Q. Okay, I understood.</p> <p>7 What did you discuss with Mr. Martucci?</p> <p>8 A. Discussed his conversation with</p> <p>9 Mr. Neesby. I discussed the investigations policy,</p> <p>10 practices of the State Board regarding</p> <p>11 investigations, discussed records pertaining to the</p> <p>12 audit following the 2016 election and activities</p> <p>13 that were part of that audit and followed that</p> <p>14 audit.</p> <p>15 Q. And what did you discuss with</p> <p>16 Ms. Brinson Bell?</p> <p>17 A. I discussed the State Board's policies</p> <p>18 with respect to audits in light of the 2017 audit</p> <p>19 report and whatever the State Board would be</p> <p>20 deciding to do about matters such as that going</p> <p>21 forward.</p> <p>22 Q. How long would you say that discussion</p> <p>23 was, approximately?</p> <p>24 A. Five minutes.</p> <p>25 Q. What about Mr. Lawson, what did you</p>

3 (Pages 6 - 9)

<p style="text-align: right;">Page 10</p> <p>1 discuss with Mr. Lawson?</p> <p>2 A. Oh, I also spoke, on a different</p> <p>3 occasion, with Ms. Brinson Bell about the</p> <p>4 organizational structure of the State Board. That</p> <p>5 conversation probably lasted 10 minutes.</p> <p>6 Q. Okay, thank you for that.</p> <p>7 Mr. Lawson, what did you discuss with</p> <p>8 Mr. Lawson?</p> <p>9 A. The lead-up to the 2017 audit report</p> <p>10 and the -- what transpired after the 2017 audit</p> <p>11 report, the State Board practices with regard to</p> <p>12 data matching, policies with regard to</p> <p>13 investigations, priorities, actual investigations</p> <p>14 that were occurring between 2016 and 2019. That's</p> <p>15 what I can recall.</p> <p>16 Q. And what about Ms. McLove? Do I have</p> <p>17 that right?</p> <p>18 A. Love, Katelyn Love.</p> <p>19 Q. Love, sorry. Okay. What did you</p> <p>20 discuss with Ms. Love?</p> <p>21 A. Similar topics. There probably would</p> <p>22 have been a pretty significant overlap because she</p> <p>23 overlapped with Mr. Lawson. She was deputy general</p> <p>24 counsel before becoming general counsel when</p> <p>25 Mr. Lawson left in 2019. I spoke with her also</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I joined staff in 2021. I don't</p> <p>2 exactly recall when it was. It was somewhere in</p> <p>3 the middle of 2021.</p> <p>4 Q. Understood. And what was your role</p> <p>5 prior to becoming associate counsel with the State</p> <p>6 Board in 2021?</p> <p>7 A. Terence's. I was deputy -- I was a</p> <p>8 special deputy attorney general at the Attorney</p> <p>9 General's Office.</p> <p>10 Q. Understood. So you joined the State</p> <p>11 Board in 2021 at some point; that's fair to say?</p> <p>12 A. That's right.</p> <p>13 Q. Okay, understood.</p> <p>14 You mentioned some documents that you</p> <p>15 reviewed in advance of today, including the</p> <p>16 investigations policy, some pages from a transcript</p> <p>17 of the deposition of Ms. Brinson Bell.</p> <p>18 Are there other documents you reviewed</p> <p>19 in advance of today?</p> <p>20 A. Other than the ones that I've already</p> <p>21 mentioned, I reviewed some web pages, the State</p> <p>22 Board's web pages regarding post-election audits.</p> <p>23 I reviewed a declaration filed by</p> <p>24 Katelyn Love in a federal case concerning subpoenas</p> <p>25 issued by the U.S. Attorney's Office that related</p>
<p style="text-align: right;">Page 11</p> <p>1 about the investigations priorities policy and</p> <p>2 practices with regard to investigating and</p> <p>3 referring cases under the strict liability law.</p> <p>4 Q. Okay. I believe that covers everyone</p> <p>5 you spoke to. Is there anyone I've omitted from my</p> <p>6 questioning?</p> <p>7 A. No.</p> <p>8 Q. Okay. And Mr. Cox, you are currently</p> <p>9 the general counsel of the State Board, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you understand, when I'm referring</p> <p>12 to the State Board, I'm referring to the North</p> <p>13 Carolina State Board of Elections?</p> <p>14 A. Yes.</p> <p>15 Q. Okay, great. How long have you served</p> <p>16 in that position, sir?</p> <p>17 A. Since last fall. I don't recall</p> <p>18 exactly when my official start date was. I want to</p> <p>19 say it was the beginning of October, maybe.</p> <p>20 Q. And what was your position prior to</p> <p>21 that?</p> <p>22 A. Associate general counsel for the State</p> <p>23 Board of Elections.</p> <p>24 Q. And for how long were you an associate</p> <p>25 counsel with the State Board?</p>	<p style="text-align: right;">Page 13</p> <p>1 to the State Board's 2016 and '17 investigation of</p> <p>2 potential illegal voting.</p> <p>3 I can't think of anything else right</p> <p>4 now.</p> <p>5 Q. As part of your preparation, did you</p> <p>6 take any notes?</p> <p>7 A. Yes.</p> <p>8 Q. Where are those notes now?</p> <p>9 A. In my office.</p> <p>10 Q. Are those notes related to specific</p> <p>11 conversations you had, or just general notes that</p> <p>12 you scribbled as part of your preparation?</p> <p>13 A. The only notes that I took that I</p> <p>14 recall are notes that I took when I spoke with</p> <p>15 Mr. Lawson on the phone.</p> <p>16 Q. And Mr. Lawson is no longer a State</p> <p>17 Board employee, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that is as of when?</p> <p>20 A. Early 2019.</p> <p>21 Q. Okay, understood. Who do you succeed</p> <p>22 in your current position, sir?</p> <p>23 A. Katelyn Love.</p> <p>24 Q. Katelyn Love. So fair to stay that she</p> <p>25 is no longer a State Board employee as of last</p>

4 (Pages 10 - 13)

<p style="text-align: right;">Page 14</p> <p>1 year?</p> <p>2 A. That's right.</p> <p>3 Q. So based on everything we've just</p> <p>4 walked through, Mr. Cox, how much time would you</p> <p>5 say you've spent, approximately, preparing for your</p> <p>6 deposition here today?</p> <p>7 A. To include sitting in on Mr. Martucci's</p> <p>8 deposition, somewhere around 10 hours.</p> <p>9 Q. So that would be approximately 7 hours</p> <p>10 consisting of Mr. Martucci's deposition, and then</p> <p>11 in addition to that, approximately 3 hours; is that</p> <p>12 fair to say?</p> <p>13 A. Well, now that you break it down, it's</p> <p>14 probably more than that. It's probably more like</p> <p>15 12 hours. I would say 5 hours outside of</p> <p>16 Mr. Martucci's deposition.</p> <p>17 Q. Okay.</p> <p>18 A. At least, I believe. Somewhere between</p> <p>19 5 and 7 hours outside of that deposition.</p> <p>20 Q. Understood.</p> <p>21 And, generally, how much of that</p> <p>22 time -- I know you gave me specifics with respect</p> <p>23 to the conversations with Ms. Brinson Bell, but how</p> <p>24 much time would you approximate you spent of those</p> <p>25 5 to 7 hours speaking to others as part of your</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Mr. Cox, I want to start with Topic 1,</p> <p>2 so I'm referring back to what I marked as</p> <p>3 Exhibit 2. Do you have that in front of you, sir?</p> <p>4 A. Yes.</p> <p>5 Q. Specifically with respect to this</p> <p>6 topic, what did you do to prepare?</p> <p>7 A. I spoke with Executive Director Karen</p> <p>8 Brinson Bell. Also present in that conversation</p> <p>9 was Deputy General Counsel Lindsey Wakely, who has</p> <p>10 within the State Board for a number of years and</p> <p>11 could fill in some gaps and details about the</p> <p>12 organizational structure. I reviewed a couple of</p> <p>13 organizational charts.</p> <p>14 I spoke -- oh, there's one other person</p> <p>15 I spoke with. I spoke with Sanford Chancellor, who</p> <p>16 was the chief operating officer of the State Board,</p> <p>17 and also the HR director, about, you know, the</p> <p>18 existence of organizational charts, and, you know,</p> <p>19 whatever details he could fill in that I didn't get</p> <p>20 from my other conversations. I spoke with Katelyn</p> <p>21 Love, as I mentioned earlier.</p> <p>22 Q. And, I'm sorry, that was Mr. Samford --</p> <p>23 A. Sanford, S-A-N-F-O-R-D.</p> <p>24 Q. Uh-huh.</p> <p>25 A. Last name Chancellor.</p>
<p style="text-align: right;">Page 15</p> <p>1 preparation?</p> <p>2 A. 4 to 5 hours.</p> <p>3 Q. Okay, understood.</p> <p>4 And so the rest would be made up of</p> <p>5 reviewing documents; is that fair to say?</p> <p>6 A. That's right.</p> <p>7 Q. And, Mr. Cox, you are an attorney,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. You have a J.D.?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Where do you have a J.D. from?</p> <p>13 A. UC Berkeley.</p> <p>14 Q. Okay. And what year did you graduate,</p> <p>15 sir?</p> <p>16 A. 2014.</p> <p>17 Q. And you are barred in the state of</p> <p>18 North Carolina?</p> <p>19 A. Yes.</p> <p>20 Q. Anywhere else?</p> <p>21 A. Not anymore. I was barred in</p> <p>22 California for a few years.</p> <p>23 Q. Do you have any other professional</p> <p>24 licenses, anything like that?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Understood.</p> <p>2 Okay. Mr. Cox, could you please</p> <p>3 describe the State Board's general organization?</p> <p>4 A. So it's -- there's a governing board of</p> <p>5 five members appointed by the governor and the</p> <p>6 administrative side of the agency operates</p> <p>7 underneath that governing board.</p> <p>8 The executive director is the chief</p> <p>9 administrator of the office. Under the executive</p> <p>10 director, there are between four and six sort of</p> <p>11 division heads. There is the general counsel</p> <p>12 heading up the legal team and the investigations</p> <p>13 division. There's the chief information officer</p> <p>14 who oversees the IT division and its various</p> <p>15 functions and offices.</p> <p>16 There is the chief operating officer</p> <p>17 and HR director, which oversees, you know,</p> <p>18 budgeting, accounting, human resources, operations,</p> <p>19 and document management for the agency.</p> <p>20 There is the deputy director. The</p> <p>21 deputy director oversees the elections</p> <p>22 administration and campaign finance divisions of</p> <p>23 the agency, as well as the voting systems division.</p> <p>24 I think I've covered everybody</p> <p>25 currently.</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 Q. Does the general counsel's team have</p> <p>2 touchpoints with respect to all of the other</p> <p>3 divisions you just mentioned?</p> <p>4 A. Yes.</p> <p>5 Q. And are you in your role as general</p> <p>6 counsel responsible for overseeing activities in</p> <p>7 those divisions as well?</p> <p>8 A. No, not really overseeing them. We --</p> <p>9 so the general counsel of the legal team obviously</p> <p>10 provides legal advice throughout the agency to all</p> <p>11 divisions of the agency.</p> <p>12 The way that sort of the management</p> <p>13 structure works is that the -- well, as the current</p> <p>14 executive director has put it together, is that</p> <p>15 there is a sort of top-level management structure</p> <p>16 of the agency where, you know, the general counsel</p> <p>17 and the heads of the other division and the</p> <p>18 executive director meet regularly to make</p> <p>19 consensus-based decisions about direction of the</p> <p>20 agency and its staff.</p> <p>21 Q. Understood.</p> <p>22 But is it fair to say that the general</p> <p>23 counsel oversees the investigations unit?</p> <p>24 A. Yes.</p> <p>25 Q. And that supervision is carried out</p>	<p style="text-align: right;">Page 20</p> <p>1 a day-to-day basis. So the -- she also reports to</p> <p>2 Ms. Wakely, who reports to me, and I'm in regular</p> <p>3 communication with both of those members of the</p> <p>4 legal team.</p> <p>5 Q. So on a day-to-day basis, the members</p> <p>6 of the investigations unit, to the extent they need</p> <p>7 legal advice, will be reaching out first and</p> <p>8 foremost to Ms. Marshall; is that fair to say?</p> <p>9 A. Yes.</p> <p>10 Q. And are you familiar with meetings</p> <p>11 between the investigations unit and the legal team</p> <p>12 conducted approximately every other two weeks?</p> <p>13 A. Every two weeks, yes.</p> <p>14 Q. Yeah. Who from the legal team</p> <p>15 participates in those meetings?</p> <p>16 A. I do, Lindsey Wakely, and Candace</p> <p>17 Marshall.</p> <p>18 Q. What type of report or summary, if any,</p> <p>19 is prepared of those meetings?</p> <p>20 A. There's no report that is specifically</p> <p>21 prepared out of the meetings as a sort of separate</p> <p>22 individual outcome of the meetings.</p> <p>23 The investigations division maintains</p> <p>24 tracker spreadsheets of all of its case files, and</p> <p>25 the meetings progress through a review of case</p>
<p style="text-align: right;">Page 19</p> <p>1 through the legal team as well as the general</p> <p>2 counsel himself?</p> <p>3 A. Yes. The technical reporting structure</p> <p>4 is that the deputy general counsel reports to the</p> <p>5 general counsel, the chief investigator reports to</p> <p>6 the deputy general counsel, who then reports to the</p> <p>7 general counsel, as I mentioned.</p> <p>8 Q. And if I have it -- sorry, go ahead.</p> <p>9 A. The other investigators report to the</p> <p>10 senior investigator.</p> <p>11 Q. And so if I have it right, the chief</p> <p>12 investigator is Mr. Martucci, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And the deputy general counsel is</p> <p>15 Ms. Wakely?</p> <p>16 A. That's right.</p> <p>17 Q. And Ms. Wakely reports to you with</p> <p>18 respect to the investigation unit's activities; is</p> <p>19 that fair to say?</p> <p>20 A. Yeah. And to complete that answer,</p> <p>21 Candace Marshall, who is sitting behind me, as</p> <p>22 associate general counsel, is the legal team's -- I</p> <p>23 don't want to call it liaison, but she is fairly</p> <p>24 embedded within the investigations division and</p> <p>25 supporting their work and providing them counsel on</p>	<p style="text-align: right;">Page 21</p> <p>1 files that need discussion that are part of that</p> <p>2 tracker. And the investigators are, you know,</p> <p>3 taking notes of decision points from those</p> <p>4 meetings. Mr. Martucci, as the sort of -- you</p> <p>5 know, the keeper of those files -- is making sure</p> <p>6 that that tracker is updated with any decision</p> <p>7 points from those meetings.</p> <p>8 So to answer your question, the</p> <p>9 trackers would -- could reflect some outcomes from</p> <p>10 the meeting, as could individual investigator's</p> <p>11 notes when we're talking about an individual</p> <p>12 investigator's case, and those notes would be kept</p> <p>13 in their case file.</p> <p>14 Q. Okay. But I take it there are no</p> <p>15 minutes of these meetings, for example.</p> <p>16 A. No.</p> <p>17 Q. Is there any type of report or summary</p> <p>18 prepared for Ms. Brinson Bell coming out of these</p> <p>19 meetings?</p> <p>20 A. No. Whenever there's an issue that may</p> <p>21 rise to the level of needing to brief Ms. Brinson</p> <p>22 Bell, it would be during an oral brief.</p> <p>23 Q. Are you aware of any such briefs having</p> <p>24 been conducted with respect to the strict liability</p> <p>25 voting law?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. Not on individual cases.</p> <p>2 Q. And just so there's no confusion, sir,</p> <p>3 you understand when I'm referring to a strict</p> <p>4 liability voting law, that I'm referring to NCGS</p> <p>5 Section 163-275, Subparagraph 5?</p> <p>6 A. Yes.</p> <p>7 Q. Great. What are the qualifications of</p> <p>8 the members of the investigative unit?</p> <p>9 MS. BABB: Objection, vague.</p> <p>10 THE WITNESS: Well, they must apply</p> <p>11 through the -- you know, the -- through the</p> <p>12 procedures prescribed under state personnel</p> <p>13 acts and through hiring procedures that are</p> <p>14 fairly uniform across the state for career</p> <p>15 state employees.</p> <p>16 They would have to submit</p> <p>17 qualifications and be interviewed for the</p> <p>18 position. There's not a -- there are not</p> <p>19 specifically a law enforcement background</p> <p>20 requirement for being a member of the</p> <p>21 investigations division.</p> <p>22 It just so happens that three of the --</p> <p>23 two of the three on the investigations</p> <p>24 division have a law enforcement background.</p> <p>25 And before that it was, you know, people who</p>	<p style="text-align: right;">Page 24</p> <p>1 review. The investigators would report out what</p> <p>2 the investigations have found for a particular</p> <p>3 case, and the legal staff would have input on</p> <p>4 whether there needs to be a different analysis on a</p> <p>5 particular case. And then, of course, Ms. Marshall</p> <p>6 would have regular contact with investigators</p> <p>7 should any questions about whether the legal</p> <p>8 elements of a crime have been met.</p> <p>9 Q. Does the legal team analyze whether the</p> <p>10 cases presented during these meetings every two</p> <p>11 weeks qualify for a referral for potential</p> <p>12 prosecution?</p> <p>13 A. Can you ask that question again?</p> <p>14 Q. Sure. Does the legal team analyze</p> <p>15 whether the cases presented during the meetings</p> <p>16 that are held every other two weeks with the</p> <p>17 investigations unit, whether those cases qualify</p> <p>18 for referral for potential prosecution?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And how so?</p> <p>21 A. Well, when we arrive at a particular</p> <p>22 case during the case review meeting, there would be</p> <p>23 a discussion about what the investigation has</p> <p>24 resulted in, the evidence. And then the</p> <p>25 investigator, or the chief investigator, would</p>
<p style="text-align: right;">Page 23</p> <p>1 were on the division and then left that also</p> <p>2 had law enforcement backgrounds.</p> <p>3 BY MR. LUNDQVIST:</p> <p>4 Q. But I take it no current member of the</p> <p>5 investigations unit is a trained lawyer; is that</p> <p>6 fair to say?</p> <p>7 A. None of the investigators, or the chief</p> <p>8 investigator, are a trained lawyer. Ms. Marshall</p> <p>9 works very closely with them, and she is a trained</p> <p>10 lawyer.</p> <p>11 Q. And who is that? I'm sorry.</p> <p>12 A. Ms. Marshall.</p> <p>13 Q. Understood, understood.</p> <p>14 Is the legal team -- well, scratch</p> <p>15 that. Let me ask you this. As part of its</p> <p>16 investigations, does the investigative unit conduct</p> <p>17 any form of legal analysis?</p> <p>18 A. Not legal analysis in the sense of, you</p> <p>19 know, needing to research case law, but the</p> <p>20 investigations division is going to be determining</p> <p>21 whether elements of a crime have been met.</p> <p>22 Q. And is the legal team required to</p> <p>23 review that analysis to confirm that the</p> <p>24 conclusions reached by the investigators is sound?</p> <p>25 A. That is part of our biweekly case</p>	<p style="text-align: right;">Page 25</p> <p>1 discuss the investigative recommendation as to</p> <p>2 whether to refer.</p> <p>3 And if there is any contrary views on</p> <p>4 that or any discussion that needed to be had from</p> <p>5 the legal side, that's where that would occur.</p> <p>6 Q. Okay. Fair to say that for the</p> <p>7 recommendation presented by the investigations team</p> <p>8 as to whether or not to refer a case, there needs</p> <p>9 to be agreement from the legal team as to that</p> <p>10 decision?</p> <p>11 MS. BABB: Objection as to form.</p> <p>12 THE WITNESS: As I understand your</p> <p>13 question, yes, for a case to be referred,</p> <p>14 and as discussed as the case review</p> <p>15 meetings, then there would be a meeting of</p> <p>16 the minds between the investigator</p> <p>17 recommending whether to refer a case and the</p> <p>18 legal team.</p> <p>19 BY MR. LUNDQVIST:</p> <p>20 Q. Is the opposite true as well, that a</p> <p>21 decision not to refer a case requires the legal</p> <p>22 team sign-off?</p> <p>23 A. Yes, the legal team would be consulted</p> <p>24 on a decision. Generally, we -- the legal team</p> <p>25 would generally be consulted on a decision not to</p>

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<p style="text-align: right;">Page 26</p> <p>1 refer a case.</p> <p>2 Now, you know, if it's just an obvious</p> <p>3 issue where the elements aren't met, then, you</p> <p>4 know, there won't be very much discussion involved.</p> <p>5 If it's -- you know, you don't -- you don't need my</p> <p>6 sign-off to not refer a case that's not a crime.</p> <p>7 Q. Okay, understood.</p> <p>8 But fair to say -- and I should make</p> <p>9 clear as to time period. We're talking from 2014</p> <p>10 through present day, okay? So I just want to make</p> <p>11 sure that none of these practices have changed over</p> <p>12 time, in which case we can discuss that.</p> <p>13 But --</p> <p>14 A. Well, yeah, the practices -- the</p> <p>15 organizational structure and those practices have</p> <p>16 changed.</p> <p>17 Prior to 2019, the investigations</p> <p>18 division did not report to the general counsel, it</p> <p>19 reported directly to the executive director. And</p> <p>20 the general counsel would -- as with all other</p> <p>21 divisions in the agency -- would have a role in</p> <p>22 advising the investigations division, but the</p> <p>23 ultimate decision point as to whether to refer or,</p> <p>24 you know, how to prioritize investigations, would</p> <p>25 typically have taken place between the chief</p>	<p style="text-align: right;">Page 28</p> <p>1 referral of a strict liability voting law case?</p> <p>2 A. Whether the evidence meets the elements</p> <p>3 of the crime.</p> <p>4 Q. Has the legal team instructed the</p> <p>5 members of the investigations unit with respect to</p> <p>6 the required elements of a breach of the strict</p> <p>7 liability voting law?</p> <p>8 A. I don't know that there's been</p> <p>9 instruction specifically as to the elements of the</p> <p>10 strict liability voting law. It's fairly</p> <p>11 straightforward.</p> <p>12 And Ms. Marshall may have more</p> <p>13 background on this, but there could have been</p> <p>14 situations where there was a question as to whether</p> <p>15 a person who had some interaction with the criminal</p> <p>16 justice system actually is serving a felony</p> <p>17 sentence and therefore would not be eligible to</p> <p>18 vote. And in circumstances like that, the legal</p> <p>19 staff -- legal team -- would provide guidance to</p> <p>20 the investigators about that. I believe</p> <p>21 Mr. Martucci testified about deferred prosecutions;</p> <p>22 that would be an example of that. There could be</p> <p>23 other -- other statuses that are not, you know,</p> <p>24 disqualifying statuses.</p> <p>25 Q. And since you touched on the deposition</p>
<p style="text-align: right;">Page 27</p> <p>1 investigator and the executive director --</p> <p>2 Q. Okay.</p> <p>3 A. -- prior to 2019.</p> <p>4 Q. Understood. Are you aware of whether</p> <p>5 or not there were regular meetings, such as the</p> <p>6 ones currently being conducted between the legal</p> <p>7 team and the investigations unit, to discuss</p> <p>8 whether or not to refer cases in that time period</p> <p>9 prior to 2019?</p> <p>10 A. There were not regular meetings as</p> <p>11 such. I do know that the general counsel, prior to</p> <p>12 2019, would have had some meetings with the</p> <p>13 executive director and the chief investigator of</p> <p>14 the agency, but I would not characterize them as</p> <p>15 regular meetings similar to the ones that we</p> <p>16 conduct now.</p> <p>17 Q. So fair to say that not every case</p> <p>18 being investigated and potentially referred would</p> <p>19 have been discussed in such meetings with the</p> <p>20 general counsel prior to 2019?</p> <p>21 A. I'm not entirely sure, but I think</p> <p>22 that's right.</p> <p>23 Q. Generally, without getting into</p> <p>24 specifics of any single case, what factors does the</p> <p>25 legal team consider in reviewing a potential</p>	<p style="text-align: right;">Page 29</p> <p>1 testimony of Mr. Martucci, I want to ask, as it</p> <p>2 relates to the topics you are giving testimony on</p> <p>3 today, is there anything in Mr. Martucci's</p> <p>4 deposition that you observed that you disagreed</p> <p>5 with?</p> <p>6 A. In his first day of deposition</p> <p>7 testimony, he was answering questions about the</p> <p>8 priorities policy, and I believe he suggested that</p> <p>9 investigations of the strict liability law fit</p> <p>10 under -- I don't know if it's the fifth or sixth</p> <p>11 priority under the investigations priority policy.</p> <p>12 I would not characterize it as such, so -- yeah.</p> <p>13 Q. How would you characterize it, sir?</p> <p>14 A. When a case of felon voting comes in to</p> <p>15 the investigations team, typically, in a</p> <p>16 run-of-the-mill case, you're going to have all of</p> <p>17 the elements of the crime present when you have</p> <p>18 that case that comes in, as an initial matter.</p> <p>19 So, you know, the investigations</p> <p>20 priority policy is designed to provide direction as</p> <p>21 to what are going to be the agency's priorities to</p> <p>22 devote investigative resources when a case comes</p> <p>23 into the door and you need to determine how to --</p> <p>24 what level of priority to give it for an</p> <p>25 investigation.</p>

<p style="text-align: right;">Page 30</p> <p>1 The issue with felon voting is that,</p> <p>2 like I said, when it comes into the door, you</p> <p>3 almost always have the elements of the crime</p> <p>4 already met. So it -- it's -- to sort of put it in</p> <p>5 lay terms, it skips that initial phase of</p> <p>6 prioritization because you basically have a</p> <p>7 violation in front of you then. You know, there</p> <p>8 are some investigative steps that need to take</p> <p>9 place so that -- so that all of the evidence is</p> <p>10 gathered, but I would say that it doesn't fit</p> <p>11 within -- well, it may or may not fit within the</p> <p>12 priorities.</p> <p>13 And the reason I say it may or may not</p> <p>14 is because, you know, when a case of voting while</p> <p>15 serving a felony sentence comes in, you know, it</p> <p>16 could quite possibly be intentional. Now that's</p> <p>17 not a requirement of the statute, but it is a --</p> <p>18 you know, one of our priorities is to investigate</p> <p>19 intentional violations of the law, of the election</p> <p>20 laws. And you don't know, when a felon voting case</p> <p>21 comes in, whether it was intentional. So that's</p> <p>22 why I said it may or may not fit the priorities.</p> <p>23 But regardless of that, it is -- it</p> <p>24 typically -- when it typically comes in, the</p> <p>25 elements are met, so there's very little</p>	<p style="text-align: right;">Page 32</p> <p>1 A. E-mails, meetings.</p> <p>2 Q. And topics-wise, what's discussed?</p> <p>3 A. Individual cases.</p> <p>4 Q. What specifically with respect to</p> <p>5 individual cases?</p> <p>6 A. The evidence gathered, the methods for</p> <p>7 gathering the evidence, whether other investigative</p> <p>8 tactics or strategies could or should be employed.</p> <p>9 Q. Are you aware of such discussions with</p> <p>10 respect to potential violations of the strict</p> <p>11 liability voting law?</p> <p>12 A. Not really.</p> <p>13 Q. So fair to say that members of the</p> <p>14 legal team have never discussed the intent</p> <p>15 requirement, or lack thereof, under the strict</p> <p>16 liability voting law with prosecutors?</p> <p>17 A. No, I wouldn't say that's fair to say.</p> <p>18 You know, I'm sort of keeping two things in mind</p> <p>19 here. One is that there is a -- there is</p> <p>20 correspondence that takes place between DAs and the</p> <p>21 State Board of Elections, which would typically be</p> <p>22 directed toward the investigators but may involve</p> <p>23 our legal staff as well, and some of that</p> <p>24 correspondence could touch on issues of intent with</p> <p>25 respect to the strict liability law.</p>
<p style="text-align: right;">Page 31</p> <p>1 investigation that has to be done to refer that to</p> <p>2 a prosecutor, as we're required to do under</p> <p>3 163-22(d).</p> <p>4 Q. And why is it one of the State Board's</p> <p>5 priorities to investigate intentional violations of</p> <p>6 the election laws?</p> <p>7 A. It reflects the level of seriousness of</p> <p>8 a crime when there's culpability involved, when</p> <p>9 there is an understanding that the person is doing</p> <p>10 something wrong.</p> <p>11 Q. So an understanding by the person who</p> <p>12 potentially committed the violation that he or she</p> <p>13 did something wrong is an element that factors into</p> <p>14 the State Board's analysis as to how to prioritize</p> <p>15 and allocate resources; is that fair to say?</p> <p>16 A. Yes.</p> <p>17 Q. Does the legal team interact with</p> <p>18 prosecutors regarding referred cases?</p> <p>19 A. Yes, sometimes.</p> <p>20 Q. And how so?</p> <p>21 A. It would typically be Ms. Marshall</p> <p>22 having back-and-forth with district attorneys or</p> <p>23 assistant district attorneys.</p> <p>24 Q. And what does that back-and-forth</p> <p>25 involve?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Are you aware of such communications in</p> <p>2 which the prosecutor to which the case was referred</p> <p>3 declined prosecution because of his or her belief</p> <p>4 that evidence of intent was required under the</p> <p>5 statute?</p> <p>6 MS. BABB: Objection, form.</p> <p>7 THE WITNESS: I don't know if that's</p> <p>8 true. I know that there have been cases</p> <p>9 where a prosecutor has indicated to us that</p> <p>10 they have declined to -- they're declining</p> <p>11 to prosecute because of a lack of intent.</p> <p>12 Now, whether the prosecutor thought that</p> <p>13 intent was required as a legal matter, I</p> <p>14 don't know.</p> <p>15 BY MR. LUNDQVIST:</p> <p>16 Q. In such instances where prosecutors</p> <p>17 have indicated that they're declining to prosecute</p> <p>18 because of a lack of intent, has the legal team</p> <p>19 from the State Board ever conducted any follow-up</p> <p>20 conversations with those prosecutors about such</p> <p>21 cases?</p> <p>22 A. I don't know.</p> <p>23 Q. Has the legal team ever prepared any</p> <p>24 written analysis of the strict liability voting</p> <p>25 law?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Can you get me another -- can you maybe</p> <p>2 rephrase the question or give me a little detail of</p> <p>3 exactly what you're asking about?</p> <p>4 Q. Sure. I'm just trying to understand --</p> <p>5 for example, we've established previously that</p> <p>6 members of the investigations team are not lawyers,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm trying to understand if, for</p> <p>10 example, the legal team has prepared any type of</p> <p>11 instructions or guidelines with respect to the</p> <p>12 strict liability voting law and shared that with</p> <p>13 the investigations unit.</p> <p>14 A. I don't know. I mean, we -- it's not</p> <p>15 like -- I'm not aware of any, you know, memos that</p> <p>16 specifically address a legal analysis of the strict</p> <p>17 liability voting law.</p> <p>18 Now, has the legal staff advised</p> <p>19 individual investigators on a particular case?</p> <p>20 Sure.</p> <p>21 Q. And just so we have this clear, from</p> <p>22 the State Board's legal team's perspective, a</p> <p>23 showing of intent is not required under the strict</p> <p>24 liability voting law, correct?</p> <p>25 A. That's correct. It is not required for</p>	<p style="text-align: right;">Page 36</p> <p>1 whether the laws the State Board is tasked with</p> <p>2 enforcing reflect discriminatory intent?</p> <p>3 A. Not typically, no.</p> <p>4 Q. What about in an atypical situation,</p> <p>5 has such an analysis ever been undertaken?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. And just so we're clear, is it your</p> <p>8 testimony and based on your knowledge as a 30(b)(6)</p> <p>9 representative here today, that such an analysis of</p> <p>10 whether or not the strict liability voting law</p> <p>11 reflects a discriminatory intent has not been</p> <p>12 conducted?</p> <p>13 A. Such analysis, to my knowledge, has not</p> <p>14 been undertaken by the State Board's in-house legal</p> <p>15 team.</p> <p>16 Q. Are you aware of other legal teams</p> <p>17 affiliated with the State Board that have</p> <p>18 undertaken such an analysis?</p> <p>19 MS. BABB: Objection to the extent it</p> <p>20 would be privileged.</p> <p>21 THE WITNESS: Yeah, the only answer I</p> <p>22 could provide on that could possibly be</p> <p>23 privileged.</p> <p>24 BY MR. LUNDQVIST:</p> <p>25 Q. I guess I'm just asking you if you're</p>
<p style="text-align: right;">Page 35</p> <p>1 prosecution or for a conviction.</p> <p>2 Q. Okay. Is the legal team familiar with</p> <p>3 the historical origins of the strict liability</p> <p>4 voting law?</p> <p>5 A. I have general familiarity with it.</p> <p>6 Q. And what is your general familiarity?</p> <p>7 A. Well, I used to be in Terence's shoes,</p> <p>8 and I remember reviewing some materials in this</p> <p>9 case about it. It's been a couple years now, so I</p> <p>10 don't have a strong recollection of it.</p> <p>11 Q. Does the legal team analyze whether the</p> <p>12 laws the State Board is tasked with enforcing</p> <p>13 reflect the discriminatory intent?</p> <p>14 MS. BABB: Objection, form.</p> <p>15 THE WITNESS: As a general matter, does</p> <p>16 the legal --</p> <p>17 MS. BABB: Uh --</p> <p>18 THE WITNESS: Are you still there?</p> <p>19 MR. LUNDQVIST: I'm still here. I can</p> <p>20 hear you.</p> <p>21 THE WITNESS: Okay. Can I ask you to</p> <p>22 ask that again? Sorry.</p> <p>23 BY MR. LUNDQVIST:</p> <p>24 Q. Yeah, sure.</p> <p>25 I asked, does the legal team analyze</p>	<p style="text-align: right;">Page 37</p> <p>1 aware of whether or not there are teams that have</p> <p>2 conducted such an analysis and not with respect to</p> <p>3 any such team's conclusions.</p> <p>4 A. So, you know, we have counsel</p> <p>5 representing us in this case, and, you know, my</p> <p>6 agency is a defendant in the case; so the counsel</p> <p>7 representing us as a defendant in the case would</p> <p>8 obviously have to analyze legal issues in the case.</p> <p>9 Q. Separate and apart from this case, are</p> <p>10 you aware of any analysis of the kind we just</p> <p>11 discussed having been undertaken by legal teams</p> <p>12 associated with the State Board?</p> <p>13 MS. BABB: Same objection.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. LUNDQVIST:</p> <p>16 Q. Who from the legal team interacts with</p> <p>17 the executive director today?</p> <p>18 A. The entire legal team interacts with</p> <p>19 the executive director.</p> <p>20 Q. Formal meetings, or more informal?</p> <p>21 A. Both. I -- the general counsel and the</p> <p>22 deputy general counsel have the most, sort of,</p> <p>23 regular formal interactions with the executive</p> <p>24 director. And other members of the legal team</p> <p>25 would have, you know, more interactions on an</p>

<p style="text-align: right;">Page 38</p> <p>1 as-needed basis or informal interactions.</p> <p>2 Q. Are you aware of any discussions</p> <p>3 between the legal team and Ms. Brinson Bell</p> <p>4 regarding the strict liability voting law?</p> <p>5 A. Yes.</p> <p>6 Q. Any such discussions unrelated to the</p> <p>7 specifics of this case?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Does Ms. Brinson Bell receive updates</p> <p>10 with respect to the investigation unit's activities</p> <p>11 as it relates to the strict liability voting law?</p> <p>12 A. Not -- not updates that are</p> <p>13 specifically, you know, categorized as such.</p> <p>14 Q. What types of updates does she receive?</p> <p>15 A. So, as you understand, the State Board</p> <p>16 has a number of statutes and criminal statutes that</p> <p>17 it investigates. So if I or the investigations</p> <p>18 staff or other members of the legal team were to</p> <p>19 brief Ms. Brinson Bell on investigative activities,</p> <p>20 you know, in a general matter, it's possible that,</p> <p>21 you know, some case or two involving the strict</p> <p>22 liability law could be mentioned. I doubt it,</p> <p>23 actually. But, you know, generally, we keep her</p> <p>24 aware of the activities of investigations.</p> <p>25 Q. And why do you doubt that?</p>	<p style="text-align: right;">Page 40</p> <p>1 investigations guidelines that the investigation</p> <p>2 unit currently follows?</p> <p>3 A. Yes.</p> <p>4 Q. Okay, how?</p> <p>5 A. The investigations priorities policy</p> <p>6 was put before the State Board of Elections at the</p> <p>7 governing board, five-member board, in 2019. Any</p> <p>8 such policies or documents that would be put before</p> <p>9 the board would be approved by the executive</p> <p>10 director before that happens.</p> <p>11 Q. Has the legal team ever participated in</p> <p>12 discussions regarding potential amendments to the</p> <p>13 investigations guidelines?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Is it your understanding that the State</p> <p>16 Board has access to racial data related to</p> <p>17 individuals who are investigated?</p> <p>18 A. The State Board has access to racial</p> <p>19 data as it is reported on an individual voter's</p> <p>20 voter registration. The investigations may or may</p> <p>21 not, you know, have documents involved in the</p> <p>22 evidence collection that referred to the</p> <p>23 individual's race. So, for example, if it included</p> <p>24 the voter registration form, yeah, or if it</p> <p>25 included an investigator looking at the person's</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Because individual cases of the strict</p> <p>2 liability law are fairly straightforward. There's</p> <p>3 not a lot of, you know, decision-making, executive</p> <p>4 decision-making, that would need to be brought into</p> <p>5 your run-of-the-mill case of someone voting while</p> <p>6 serving a felony sentence.</p> <p>7 Q. So are there instances in which</p> <p>8 potential voting felonies or violations have been</p> <p>9 investigated but the executive director is</p> <p>10 consulted with respect to what action to take</p> <p>11 related to those kinds of matters?</p> <p>12 MS. BABB: Objection as to form.</p> <p>13 THE WITNESS: Not that I'm aware of</p> <p>14 with respect to individual cases. So, you</p> <p>15 know, I'm separating that out from a sort of</p> <p>16 general policy determination, which is</p> <p>17 reflected in the 2019 investigations</p> <p>18 priority policy.</p> <p>19 BY MR. LUNDQVIST:</p> <p>20 Q. But fair to say that the executive</p> <p>21 director does not need to sign off on a decision</p> <p>22 whether or not to refer a strict liability voting</p> <p>23 law case for a potential prosecution?</p> <p>24 A. That is correct.</p> <p>25 Q. Did the executive director approve the</p>	<p style="text-align: right;">Page 41</p> <p>1 record, the voter's record, in our statewide</p> <p>2 election management system, the race would be there</p> <p>3 because it was entered into the voter registration</p> <p>4 application, but it's not necessarily the case that</p> <p>5 that would be true. You know, when an</p> <p>6 investigation comes in, when a referral comes in,</p> <p>7 you know, the race is not needed. It's not</p> <p>8 something that, you know, the investigators are</p> <p>9 making sure they gather as part of evidence</p> <p>10 gathering. So that would be two different things.</p> <p>11 Yes, for voter registration and our --</p> <p>12 our database on voter records, race is an element</p> <p>13 and not always included, but often included, in</p> <p>14 a -- in a person's record. But for investigations,</p> <p>15 it's not a factor.</p> <p>16 Q. Has that racial data been analyzed in</p> <p>17 any way as it relates to investigations and</p> <p>18 referrals under the strict liability voting law?</p> <p>19 A. Other than in response to the</p> <p>20 Plaintiff's request for information in this case,</p> <p>21 not that I'm aware of.</p> <p>22 Q. Okay.</p> <p>23 A. I'll clarify one aspect of that, is</p> <p>24 that in 2017, when the post 2016 election audit was</p> <p>25 undertaken, I am aware that the data team, in</p>

<p style="text-align: right;">Page 42</p> <p>1 conducting that, in compiling that report, did 2 cross-reference the voter file with records of 3 people being investigated for the various crimes 4 that were mentioned in that audit report. And in 5 an appendix to that audit report, there's a -- you 6 know, a sorting of the political party affiliation 7 with respect to various crimes. In order to get 8 that, the data team would have also had access to 9 race. Now, I don't know that there was an analysis 10 at the time of, you know, race with respect to each 11 of the crimes that were discussed in that audit 12 report. But because it's pulling from the same 13 database -- that is, the database containing party 14 registration and race on the voter registration 15 file -- that data would be there.</p> <p>16 Q. Understood.</p> <p>17 As part of the meetings currently being 18 conducted between the legal team and the 19 investigations unit, are you familiar with cases 20 being investigated under the strict liability 21 voting law?</p> <p>22 A. Individual cases?</p> <p>23 Q. Yeah.</p> <p>24 A. Not really. I mean, I could not -- I 25 could not mention a particular case today sitting</p>	<p style="text-align: right;">Page 44</p> <p>1 rights at the initiation of that supervision and at 2 the conclusion of that supervision. So, you know, 3 and that is documented by the probation and parole 4 officers, in the supervisee's file.</p> <p>5 Also, you know, we, after 2017, really 6 made sure that the voter forms that a voter would 7 sign when they're registering, updating their voter 8 registration, and are checking in to vote or 9 submitting an absentee ballot, all of those very 10 clearly articulate the rules about whether you can 11 vote while serving a felony sentence.</p> <p>12 So all that is to say that typically a 13 case of felon voting, after it gets investigated, 14 is going to have those types of documents in the 15 investigative file. So it would be -- one could 16 say that those types of documents provide 17 circumstantial evidence of intent, or knowledge, 18 but you could also have evidence to the contrary in 19 the file, but that would typically come from 20 interviews with probation/parole officers, or with 21 the voter themselves.</p> <p>22 So that's a long way of answering your 23 question, which is, am I aware of cases being 24 referred that lack intent for the strict liability 25 law? And I guess the short answer is I'm not sure</p>
<p style="text-align: right;">Page 43</p> <p>1 before you.</p> <p>2 Q. Say within the last year, are you aware 3 of cases that have been brought up for discussion 4 at these meetings with the legal team that involved 5 potential violations of the strict liability voting 6 law?</p> <p>7 A. Oh, yeah.</p> <p>8 Q. Are you aware of such cases also having 9 been referred for potential prosecution?</p> <p>10 A. Yes.</p> <p>11 Q. And are you aware of cases within that 12 category that were referred and did not include any 13 evidence that the voter acted knowingly or 14 intentionally?</p> <p>15 A. I don't know. The reason I don't know 16 is because, you know, one could say there is 17 circumstantial evidence.</p> <p>18 There -- after 2017 -- after the audit 19 of 2017, our state's Department of Public Safety 20 worked with the State Board of Elections to better 21 inform people who were outside of -- well, both 22 people who were leaving incarceration and also 23 people who were entering into some sort of felony 24 supervision, probation, potentially supervision, or 25 parole, and to better inform them of their voting</p>	<p style="text-align: right;">Page 45</p> <p>1 because of those pieces of circumstantial evidence.</p> <p>2 Q. Is it the legal team's position that 3 such forms having been filled out and signed and 4 acknowledged by an ex-felon provides circumstantial 5 evidence of intent?</p> <p>6 A. Yes.</p> <p>7 Q. And is it fair to say that the legal 8 team's position on this matter reflects the State 9 Board's position?</p> <p>10 A. As -- 11 (Technical difficulties.) 12 (Internet connection lost and 13 discussion held off the record.)</p> <p>14 BY MR. LUNDQVIST:</p> <p>15 Q. So Mr. Cox, is it fair to say that the 16 legal team's position on this matter reflects the 17 State Board's position?</p> <p>18 A. I believe my answer was the legal 19 team's position reflects the administrative 20 agency's position on this legal matter, but the 21 State Board, as a governing body of five members, 22 has never opined on this particular issue.</p> <p>23 Q. In the last year, are you aware of 24 cases involving potential violations of the strict 25 liability voting law having been discussed between</p>

<p style="text-align: right;">Page 46</p> <p>1 the investigative unit and the legal team in which</p> <p>2 the interviews conducted with the potential</p> <p>3 violators indicated that they did not act knowingly</p> <p>4 or intentionally?</p> <p>5 MS. BABB: Objection as to form.</p> <p>6 THE WITNESS: In the past year, I'm not</p> <p>7 sure one way or the other.</p> <p>8 BY MR. LUNDQVIST:</p> <p>9 Q. How about in the past two years?</p> <p>10 A. Past two years...</p> <p>11 Again, I'm not sure one way or the</p> <p>12 other. I know that -- I'll give it five years. I</p> <p>13 know that in the past five years, there -- that is</p> <p>14 the case, yes. There have been some, yes.</p> <p>15 Q. Okay. And that is after these</p> <p>16 additional measures with respect to having</p> <p>17 ex-felons signing certain documents were put in</p> <p>18 place; is that fair to say?</p> <p>19 A. Can you complete the whole -- what</p> <p>20 is -- what is it -- can you ask the question in a</p> <p>21 full form so I know exactly what I'm saying has</p> <p>22 happened in the last three years?</p> <p>23 Q. Sure. You testified that in the last</p> <p>24 five years there have been cases discussed between</p> <p>25 the legal team and the investigative unit in which</p>	<p style="text-align: right;">Page 48</p> <p>1 language, and worked, as well, with the</p> <p>2 Department of Public Safety to ensure that</p> <p>3 forms that were provided to supervisees and</p> <p>4 to people leaving incarceration included</p> <p>5 warnings; or advisements, I should say.</p> <p>6 I mean, these forms get updated every</p> <p>7 year. This aspect -- the fact that this</p> <p>8 sort of warning or this particular language</p> <p>9 that we're talking about has been included</p> <p>10 in these forms, that's been fairly constant.</p> <p>11 But there has been some revision to the</p> <p>12 forms about the particular language, owing</p> <p>13 principally to court cases that have changed</p> <p>14 the felon eligibility requirements.</p> <p>15 MR. LUNDQVIST: Understood.</p> <p>16 THE WITNESS: So the last time these</p> <p>17 forms was updated was, you know, a week ago.</p> <p>18 BY MR. LUNDQVIST:</p> <p>19 Q. Correct, correct.</p> <p>20 Is the State Board aware of cases in</p> <p>21 which prosecutors have taken the same position as</p> <p>22 the State Board is taking with respect to</p> <p>23 circumstantial evidence of intent, as you've just</p> <p>24 described here today?</p> <p>25 A. I'm not sure.</p>
<p style="text-align: right;">Page 47</p> <p>1 interviews conducted with the potential violators</p> <p>2 indicated that they did not act knowingly or</p> <p>3 intentionally; is that correct?</p> <p>4 A. That's right.</p> <p>5 Q. Okay. And that time period within the</p> <p>6 last five years is after these additional measures</p> <p>7 to have ex-felons sign certain documents were put</p> <p>8 in place; is that fair to say?</p> <p>9 A. Some of them, but not necessarily all</p> <p>10 of them.</p> <p>11 Q. Okay. And what are the most recent</p> <p>12 such additional requirements with respect to having</p> <p>13 ex-felons sign documents related to their rights to</p> <p>14 vote that you are aware of?</p> <p>15 MS. BABB: Objection, confusing.</p> <p>16 THE WITNESS: Taking your question to</p> <p>17 mean, you know, when did the State Board</p> <p>18 and/or other state agencies work to put</p> <p>19 forms in place most recently to make</p> <p>20 citizens aware of their voting rights while</p> <p>21 serving a felony sentence, that would have</p> <p>22 been in 2017 midway to the year -- to the</p> <p>23 fall -- where the State Board worked on</p> <p>24 making sure that all of its voter-facing</p> <p>25 forms included the correct attestation</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. You haven't discussed that with</p> <p>2 prosecutors; that is, whether or not a felon</p> <p>3 signing certain forms and acknowledging certain</p> <p>4 warnings can provide circumstantial evidence of</p> <p>5 intent?</p> <p>6 A. I have not, no, and I am not sure</p> <p>7 whether other members of the legal staff have.</p> <p>8 MR. LUNDQVIST: I am about to switch to</p> <p>9 a new topic. If everyone is okay to</p> <p>10 proceed, I'm happy to do it, or we can --</p> <p>11 MS. BABB: We're good.</p> <p>12 MR. LUNDQVIST: Okay, Great.</p> <p>13 BY MR. LUNDQVIST:</p> <p>14 Q. So Mr. Cox, going back to Exhibit</p> <p>15 Number 2, I'd like to direct your attention to</p> <p>16 Topic Number 6.</p> <p>17 Do you have that in front of you, sir?</p> <p>18 A. Yes.</p> <p>19 Q. Specifically with respect to this</p> <p>20 topic, what did you do to prepare?</p> <p>21 A. I spoke with legal staff, spoke with</p> <p>22 outside counsel, with the Attorney General's</p> <p>23 Office. I spoke with former General Counsel</p> <p>24 Katelyn Love. I reviewed documents that reflect</p> <p>25 our post-election audit procedures.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Which documents in particular are you</p> <p>2 referring to?</p> <p>3 A. The post-election audit report from</p> <p>4 2017, the State Board's web page that discusses</p> <p>5 post-election audits, the post-election audit</p> <p>6 reports from the most recent general elections.</p> <p>7 That's all I can think of right now.</p> <p>8 Q. When you say the most recent general</p> <p>9 elections, are you referring to an audit of the</p> <p>10 general elections in 2022?</p> <p>11 A. Yeah, so the State Board conducts</p> <p>12 post-election audits after each election.</p> <p>13 Q. And are they all made public?</p> <p>14 A. Yes.</p> <p>15 Q. Can you just, in a general matter,</p> <p>16 describe the State Board's policies with respect to</p> <p>17 post-election audits?</p> <p>18 A. So the State Board conducts a series of</p> <p>19 post-election audits or reviews generally designed</p> <p>20 to ensure the accuracy of the election results.</p> <p>21 By law, the one audit that's required</p> <p>22 is a random selection of voting -- a random</p> <p>23 selection of ballots in the counties that must be</p> <p>24 compared to the tabulation -- a hand count of those</p> <p>25 ballots that must be compared to the machine</p>	<p style="text-align: right;">Page 52</p> <p>1 box stuffing or something like that, you know, you</p> <p>2 can't reconcile why you have, you know, a certain</p> <p>3 number of ballots when you can't, you know, compare</p> <p>4 a similar number of voter check-ins.</p> <p>5 There is something called a close</p> <p>6 contest audit that we do. That's kind of tied in</p> <p>7 with the other audits I already mentioned. So we</p> <p>8 will look and see whether there are any contests,</p> <p>9 from the top all the way down to the ballot in</p> <p>10 every county, that has a margin of victory that is</p> <p>11 so small that any discrepancy in one of the other</p> <p>12 audits might be large enough to, you know, meet</p> <p>13 that margin of victory. So that's another check</p> <p>14 that we do. Those are the standard ones.</p> <p>15 Recently, there was a pilot program we</p> <p>16 did in 2021 for a risk-limiting audit, which is</p> <p>17 similar to the voting machine tabulation audit</p> <p>18 where you are hand counting -- hand-to-eye</p> <p>19 counting -- ballots and comparing those to the</p> <p>20 reported results through a proven statistical</p> <p>21 method to determine the degree of confidence in the</p> <p>22 accuracy of the results.</p> <p>23 I think I've exhausted the topic.</p> <p>24 Q. Thank you.</p> <p>25 Do the regular policies with respect to</p>
<p style="text-align: right;">Page 51</p> <p>1 tabulation that was done on those ballots.</p> <p>2 And that is to determine whether the</p> <p>3 voting equipment accurately reported the results of</p> <p>4 the election.</p> <p>5 There is a -- it's called a provisional</p> <p>6 audit -- where various data reviews are programmed</p> <p>7 into our statewide election management system to</p> <p>8 flag potentially incorrect determinations by a</p> <p>9 category of elections as to whether a provisional</p> <p>10 ballot should be counted or not.</p> <p>11 There is the -- what's called the voter</p> <p>12 history audit, another -- all of these happen,</p> <p>13 like, in the immediate days following an election,</p> <p>14 by the way.</p> <p>15 So the voter history audit would</p> <p>16 compare the data on voters that get checked in at a</p> <p>17 particular voting site or voting method or absentee</p> <p>18 voting, compare that against the counts of the</p> <p>19 results, the numbers of ballots to determine that</p> <p>20 you can reconcile the people who get checked in</p> <p>21 with the number of ballots that you have for</p> <p>22 various voting methods, and, you know, batches of</p> <p>23 tabulation, to put it in lay terms.</p> <p>24 That is -- that is determined whether,</p> <p>25 you know, you have, in a worst case, like ballot</p>	<p style="text-align: right;">Page 53</p> <p>1 post-election audits followed by the State Board</p> <p>2 include a particular review of potential felony</p> <p>3 voting?</p> <p>4 A. No.</p> <p>5 Q. Okay. And why is that?</p> <p>6 A. Since 2017, the State Board, and in</p> <p>7 conjunction with the state Department of Public</p> <p>8 Safety, have really attempted to improve the</p> <p>9 process of informing voters who are convicted of a</p> <p>10 felony and ensuring that our list of eligible</p> <p>11 voters is maintained and updated to reflect people</p> <p>12 who have become ineligible due to a felony</p> <p>13 conviction.</p> <p>14 So the idea is that -- you know, and</p> <p>15 notice of those processes have improved in</p> <p>16 efficiency and in accuracy and in, you know,</p> <p>17 uniform implementation.</p> <p>18 So the idea behind this is that we want</p> <p>19 to make sure that, on the front end, people do not</p> <p>20 commit this crime, because they can't, because</p> <p>21 they're not registered voters if they're</p> <p>22 ineligible, and/or that people who would be</p> <p>23 ineligible are better aware of the fact that they</p> <p>24 cannot vote.</p> <p>25 Q. Do you believe that those measures that</p>

<p style="text-align: right;">Page 54</p> <p>1 you just described have removed all instances in</p> <p>2 which voters potentially violated the strict</p> <p>3 liability voting law despite not knowing they</p> <p>4 weren't allowed to vote?</p> <p>5 MS. BABB: Objection, speculation.</p> <p>6 THE WITNESS: Just knowing -- how do I</p> <p>7 phrase this? I -- I've done no study --</p> <p>8 we've done no study to determine whether</p> <p>9 that's the case. I have serious doubts as</p> <p>10 to whether that has removed all such</p> <p>11 instances where a voter will unknowingly</p> <p>12 commit this crime.</p> <p>13 THE COURT REPORTER: That's --</p> <p>14 BY MR. LUNDQVIST:</p> <p>15 Q. And why do you have such serious</p> <p>16 doubts?</p> <p>17 THE WITNESS: Did the court reporter</p> <p>18 just jump in?</p> <p>19 THE COURT REPORTER: Yeah, I just</p> <p>20 wanted to make sure that last objection -- I</p> <p>21 can't really see you, Ms. Babb, is that you</p> <p>22 objecting?</p> <p>23 MS. BABB: Yes, it is.</p> <p>24 THE COURT REPORTER: Thank you, just</p> <p>25 wanted to confirm. All good.</p>	<p style="text-align: right;">Page 56</p> <p>1 voter will unknowingly commit this crime."</p> <p>2 Do you recall that testimony, sir?</p> <p>3 A. Yes.</p> <p>4 Q. And my follow-up question was, And why</p> <p>5 do you have such serious doubts?</p> <p>6 A. Because you're dealing with a large</p> <p>7 population of people. I don't know the total</p> <p>8 population of people who are serving a current</p> <p>9 felony conviction in North Carolina, but I know</p> <p>10 that the population of people serving a felony</p> <p>11 sentence in North Carolina under the state system,</p> <p>12 outside of prison or jail, is somewhere between 40</p> <p>13 and 50,000. You know, just in recognition of</p> <p>14 the -- of human frailty and understanding, and, you</p> <p>15 know, various abilities to understand the law in a</p> <p>16 complicated world, especially when you're faced</p> <p>17 with the complications of complying with the</p> <p>18 various requirements of the criminal justice</p> <p>19 system, I have serious doubts as to whether every</p> <p>20 person who is advised of their rights about voting</p> <p>21 or not while serving a felony sentence, you know,</p> <p>22 fully internalizes that when they're advised of</p> <p>23 that and can act accordingly and can remember that,</p> <p>24 you know, a year down the road when they're still</p> <p>25 on a probation sentence.</p>
<p style="text-align: right;">Page 55</p> <p>1 THE WITNESS: Can you ask your question</p> <p>2 again?</p> <p>3 BY MR. LUNDQVIST:</p> <p>4 Q. Yeah, sure.</p> <p>5 So you testified, Mr. Cox, that you had</p> <p>6 serious doubts as to whether or not the measures</p> <p>7 that have -- actually, let me just collect my</p> <p>8 thoughts here for a second.</p> <p>9 My follow-up question was why do you</p> <p>10 have such serious doubts? But let me just try to</p> <p>11 read back, so we have a clear record.</p> <p>12 I asked whether you believe that the</p> <p>13 measures you described that have been put in place</p> <p>14 to reduce instances of potential violations of the</p> <p>15 strict liability voting law have removed all</p> <p>16 instances in which voters potentially violated that</p> <p>17 law despite not knowing they weren't allowed to</p> <p>18 vote.</p> <p>19 Do you recall that question being</p> <p>20 asked, sir?</p> <p>21 A. Yes.</p> <p>22 Q. And your answer was, "I've done no</p> <p>23 study -- we've done no study to determine whether</p> <p>24 that's the case. I have serious doubts as to</p> <p>25 whether that has removed all such instances where a</p>	<p style="text-align: right;">Page 57</p> <p>1 So, you know, it's not based upon any</p> <p>2 sort of official data or analysis, just based upon</p> <p>3 a general understanding of human frailty.</p> <p>4 Q. Understood, understood.</p> <p>5 And you mentioned previously, Mr. Cox,</p> <p>6 that the State Board has not undertaken any</p> <p>7 specific study in this area, but let me ask you</p> <p>8 this: Has the State Board ever studied whether or</p> <p>9 not the strict liability voting law, as it remains</p> <p>10 on the books, has a deterrent effect on ex-felons</p> <p>11 who are, in fact, eligible to vote and has kept</p> <p>12 them away from the ballot box?</p> <p>13 A. So the question is whether the strict</p> <p>14 liability law has a deterrent effect on voters who</p> <p>15 have a felony conviction in their past but have now</p> <p>16 become eligible to vote?</p> <p>17 Q. Correct.</p> <p>18 A. No, there's been no study of that --</p> <p>19 Q. Okay --</p> <p>20 A. -- at the State Board.</p> <p>21 Q. Okay. I'm sorry, what was the last</p> <p>22 thing you said?</p> <p>23 A. There's been no study of that at the</p> <p>24 State Board.</p> <p>25 Q. Are you aware of any such studies other</p>

<p style="text-align: right;">Page 58</p> <p>1 than at the State Board?</p> <p>2 A. No.</p> <p>3 Q. Do you believe any such deterrent</p> <p>4 effect may exist?</p> <p>5 MS. BABB: Objection, speculation.</p> <p>6 THE WITNESS: I believe it's absolutely</p> <p>7 possible that someone could be confused</p> <p>8 about how rights are restored following a</p> <p>9 felony conviction in North Carolina.</p> <p>10 BY MR. LUNDQVIST:</p> <p>11 Q. Understood.</p> <p>12 And I briefly took us aside from</p> <p>13 Topic 6 here, but I want to come back to it, sir.</p> <p>14 So in order for there to be an audit, a</p> <p>15 post-election audit, who needs to approve that?</p> <p>16 A. Ultimately, the executive director of</p> <p>17 the State Board.</p> <p>18 Q. Is it an election-by-election-type</p> <p>19 approval process, or are there standing procedures</p> <p>20 after every election such that these audits are</p> <p>21 just conducted in the ordinary course?</p> <p>22 A. It's the latter, it's that there's a</p> <p>23 standard set of audits that get -- that are</p> <p>24 undertaken after each election.</p> <p>25 The exception to that was the pilot</p>	<p style="text-align: right;">Page 60</p> <p>1 those groups to the State Board to encourage it to</p> <p>2 undertake a post-election audit?</p> <p>3 A. I don't know specifically. I know that</p> <p>4 generally the State Board staff felt like they were</p> <p>5 under pressure to conduct some sort of audit to let</p> <p>6 the public and the members of the General Assembly</p> <p>7 know, you know, whether and to what extent illegal</p> <p>8 voting occurred.</p> <p>9 I don't know about specific direct</p> <p>10 communications. I do know there was -- the most</p> <p>11 specific I could get -- and this is based upon Josh</p> <p>12 Lawson's recollection -- is that the elections</p> <p>13 committee in the legislature was indicating a</p> <p>14 willingness to impose certain post-election review</p> <p>15 or audit procedures on the State Board of</p> <p>16 Elections.</p> <p>17 And part of the rationale for</p> <p>18 conducting the audit in 2017 was to get ahead of</p> <p>19 that and to, you know, do it all on the State</p> <p>20 Board's own terms, you know, not -- not be told how</p> <p>21 you're going to do an investigation, but do an</p> <p>22 investigation that is -- and to contextualize</p> <p>23 properly that investigation so that the public and</p> <p>24 leaders would understand, you know, that illegal</p> <p>25 voting does occur, but it does not occur anywhere</p>
<p style="text-align: right;">Page 59</p> <p>1 program we did in 2021 of the risk-limiting audit,</p> <p>2 but other than that, the same post-election audit</p> <p>3 procedures that have been in place since I guess --</p> <p>4 I suppose the municipal elections in 2017 -- have</p> <p>5 been in place since that time.</p> <p>6 Q. Has the State Board ever undertaken a</p> <p>7 post-election audit in response to political</p> <p>8 pressure?</p> <p>9 A. The 2017 audit was in part a response</p> <p>10 to political pressure.</p> <p>11 Q. And what type of political pressure,</p> <p>12 more specifically?</p> <p>13 A. Following the 2016 general election,</p> <p>14 the president-elect and then the president and his</p> <p>15 team were making broad accusations about the</p> <p>16 integrity of election results across the country.</p> <p>17 That also -- I don't know if it is, you</p> <p>18 know, a cause-and-effect relationship, but it was a</p> <p>19 relationship nonetheless. I do know that members</p> <p>20 of the General Assembly of North Carolina were also</p> <p>21 making statements about wanting to investigate the</p> <p>22 accuracy of election results and whether, you know,</p> <p>23 illegal votes contributed to the election results</p> <p>24 in 2016.</p> <p>25 Q. Was there direct outreach by either of</p>	<p style="text-align: right;">Page 61</p> <p>1 near the amount that would call into question the</p> <p>2 results of elections.</p> <p>3 Q. Okay. Are you familiar with the</p> <p>4 post-election review or audit procedures that the</p> <p>5 elections committee was contemplating imposing on</p> <p>6 the State Board?</p> <p>7 A. No.</p> <p>8 Q. How are you aware that members of the</p> <p>9 State Board were feeling the pressure you just</p> <p>10 described?</p> <p>11 A. In conversations with Josh Lawson.</p> <p>12 Q. And what specifically did he describe</p> <p>13 in that respect?</p> <p>14 A. Basically everything I've just</p> <p>15 described, that there was -- you know, that the</p> <p>16 incoming president in 2016 and early 2017 was</p> <p>17 making broad accusations about the accuracy of the</p> <p>18 vote and whether, you know, a number of illegal</p> <p>19 votes have been cast and that there were, you know,</p> <p>20 also statements from political leaders in the state</p> <p>21 in that regard.</p> <p>22 Q. Was there pressure to come up with a</p> <p>23 large number of irregularities?</p> <p>24 A. Not that I'm aware of. And that was</p> <p>25 not indicated to me in my conversations with former</p>

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<p style="text-align: right;">Page 62</p> <p>1 general counsel.</p> <p>2 Q. Was there pressure to specifically</p> <p>3 audit and investigate potential felony voting?</p> <p>4 A. I don't know. I will say that the</p> <p>5 focus of the, you know, national leaders seemed to</p> <p>6 be more on noncitizen voting. I don't know, when</p> <p>7 it came to state leaders, whether that was, you</p> <p>8 know, the focus or not.</p> <p>9 Q. And prior to this -- are you aware of</p> <p>10 any other instances, prior to the 2016 general</p> <p>11 election audit, in which felony voting was</p> <p>12 specifically audited?</p> <p>13 A. I believe there was some data review,</p> <p>14 perhaps, in the 2014 election, perhaps the 2015</p> <p>15 municipal elections, I'm not sure.</p> <p>16 I do know that after -- you know,</p> <p>17 around about 2012, 2013, there was -- there was a</p> <p>18 pretty significant change in the law -- in the laws</p> <p>19 governing elections in North Carolina. We called</p> <p>20 it VIVA, the Voter Information Verification Act, or</p> <p>21 something like that. It included a lot of</p> <p>22 different changes to the voting laws in North</p> <p>23 Carolina, and it was subject to significant</p> <p>24 litigation as well. Some provisions were</p> <p>25 ultimately adjoined, but not all.</p>	<p style="text-align: right;">Page 64</p> <p>1 to including felony voting as part of the 2016</p> <p>2 general election audit?</p> <p>3 MS. BABB: Objection, vague.</p> <p>4 THE WITNESS: Not -- not specifically</p> <p>5 with respect to felon voting, no. I was</p> <p>6 going to mention that there was -- there</p> <p>7 was -- you know, so the incoming president</p> <p>8 tapped the vice president to, you know, put</p> <p>9 together this commission on voting</p> <p>10 irregularities -- or I don't know exactly</p> <p>11 what they called it. So that was in</p> <p>12 formation. And there was a lot of media</p> <p>13 attention to that at the time.</p> <p>14 My recollection of the sequence of</p> <p>15 events is that it wasn't until after the</p> <p>16 State Board released its post-election audit</p> <p>17 report that there was any sort of formal</p> <p>18 request made by that commission to the State</p> <p>19 Board, but that -- so that was after the</p> <p>20 fact. I don't believe that that had</p> <p>21 formally come down.</p> <p>22 Q. Okay. Are you familiar with those</p> <p>23 requests made to the State Board by the commission?</p> <p>24 A. Generally.</p> <p>25 Q. And what were they?</p>
<p style="text-align: right;">Page 63</p> <p>1 Hand and hand with that, large overall</p> <p>2 voting laws, was additional appropriations to the</p> <p>3 State Board for investigators, along with other</p> <p>4 appropriations to carry out the provisions of that</p> <p>5 law.</p> <p>6 Once there were more investigators at</p> <p>7 the State Board and with -- my understanding is</p> <p>8 with -- with the understanding that the legislative</p> <p>9 direction was to conduct more data-based analysis</p> <p>10 of voting, there were such analyses that took</p> <p>11 place, nothing that I'm aware of that reached --</p> <p>12 that was to the extent of what happened in the post</p> <p>13 2016 election time period, but I'm generally aware</p> <p>14 that there was some data matching that was done</p> <p>15 prior to that.</p> <p>16 Q. Okay. And was the State Board</p> <p>17 encouraged or pressured to increase its focus on</p> <p>18 that type of data matching in conducting the 2016</p> <p>19 general election audit?</p> <p>20 A. I don't know specifically whether --</p> <p>21 whether the data matching was specifically</p> <p>22 encouraged by -- by anyone outside the agency.</p> <p>23 Yeah.</p> <p>24 Q. Are you familiar with any other</p> <p>25 communications from external players as it relates</p>	<p style="text-align: right;">Page 65</p> <p>1 A. I believe the commission made a request</p> <p>2 of every chief election officer -- official -- in</p> <p>3 the country -- at the state level, at least -- for</p> <p>4 voting data. It was a lot of voting data of a lot</p> <p>5 of -- some data that would have included</p> <p>6 confidential information, or information that state</p> <p>7 laws made confidential for voters.</p> <p>8 And I don't think it was like, you</p> <p>9 know, Give us ballots. I think it was more like,</p> <p>10 you know, voter dates of birth, which North</p> <p>11 Carolina law makes confidential, Social Security</p> <p>12 numbers, and that sort of thing.</p> <p>13 Q. Understood.</p> <p>14 But as far as you recall, those</p> <p>15 requests -- those specific requests came after the</p> <p>16 audit had already been conducted by the State</p> <p>17 Board?</p> <p>18 A. That's my recollection of the sequence</p> <p>19 of the history.</p> <p>20 Q. Any other specific requests from the</p> <p>21 state legislature with respect to the 2016 general</p> <p>22 audit report?</p> <p>23 A. Not that I could recall or that prior</p> <p>24 general counsel could recall.</p> <p>25 Q. I think we've touched on a lot of it,</p>

<p style="text-align: right;">Page 66</p> <p>1 Mr. Cox, but I want to direct your attention to</p> <p>2 Topic 7(b).</p> <p>3 A. Can we take a three-minute recess?</p> <p>4 MR. LUNDQVIST: Yeah, of course. Let's</p> <p>5 go off the record.</p> <p>6 (A brief recess was held.)</p> <p>7 BY MR. LUNDQVIST:</p> <p>8 Q. Mr. Cox, before we took a quick break,</p> <p>9 I directed your attention to Topic 7(b).</p> <p>10 Do you have that in front of you, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Specifically for this topic, what did</p> <p>13 you do to prepare?</p> <p>14 MS. BABB: Did you read all of that?</p> <p>15 Sorry, it's on two pages, so we're</p> <p>16 going to --</p> <p>17 MR. LUNDQVIST: Yeah, yeah.</p> <p>18 THE WITNESS: Yes. You know, reading</p> <p>19 the audit report itself from 2017,</p> <p>20 discussing with counsel, discussing with</p> <p>21 current staff who were -- current legal</p> <p>22 staff who were there, and Mr. Martucci, at</p> <p>23 the time of the audit, briefly discussing</p> <p>24 with Ms. Brinson Bell, you know, the policy</p> <p>25 direction after the audit, discussing with</p>	<p style="text-align: right;">Page 68</p> <p>1 public to understand the level of illegal voting</p> <p>2 that may occur and the fact that it does not</p> <p>3 compromise the integrity of elections, while that</p> <p>4 goal may have been laudatory, you know, there was</p> <p>5 significant collateral impact to the -- anybody who</p> <p>6 was subject to investigation and prosecution as a</p> <p>7 result of it and that the -- going forward, the</p> <p>8 direction of the State Board with respect to</p> <p>9 potential cases of voting while serving a felony</p> <p>10 sentence would be to concentrate resources and</p> <p>11 practices to avoid it occurring to begin with,</p> <p>12 rather than waiting until after an election to</p> <p>13 determine whether the crime occurred.</p> <p>14 Now, that's not to say that when we get</p> <p>15 evidence that the crime has occurred that we do not</p> <p>16 investigate and refer, but that, you know, the</p> <p>17 effort would be more focused on the front end to</p> <p>18 avoid the crime occurring, you know, instead of</p> <p>19 sort of the data-driven audit activity that would</p> <p>20 lead to identifications of felon voters.</p> <p>21 Q. Okay. And you mentioned collateral</p> <p>22 impact. What do you mean by that?</p> <p>23 A. Well, through the data audit, hundreds</p> <p>24 of people were identified as voting while serving a</p> <p>25 felony sentence. And most of those, I believe,</p>
<p style="text-align: right;">Page 67</p> <p>1 former General Counsel Josh Lawson and</p> <p>2 former General Counsel Katelyn Love the</p> <p>3 facts surrounding the audit and what</p> <p>4 transpired afterwards.</p> <p>5 I have -- I have my own level of</p> <p>6 understanding about the things that occurred</p> <p>7 after the audit based on having represented</p> <p>8 the State Board as outside counsel in other</p> <p>9 cases and having interacted with folks in</p> <p>10 the Department of Public Safety and staff at</p> <p>11 the State Board of Elections on, you know,</p> <p>12 the sort of administrative items that were</p> <p>13 undertaken to try to minimize the chances</p> <p>14 for felon voting.</p> <p>15 BY MR. LUNDQVIST:</p> <p>16 Q. And with respect to your discussions</p> <p>17 with Ms. Brinson Bell regarding the policy</p> <p>18 direction after the audit, what did you discuss in</p> <p>19 that regard?</p> <p>20 A. I just wanted to confirm with her my</p> <p>21 understanding of the policy direction after the</p> <p>22 2017 audit. We, you know, discussed the fact that</p> <p>23 that audit, you know, while -- although it may have</p> <p>24 had sort of good motives behind it, which were to</p> <p>25 try to create a, you know, clear record for the</p>	<p style="text-align: right;">Page 69</p> <p>1 were referred to prosecution. And, you know, it</p> <p>2 was the first of its kind, so it was a pretty</p> <p>3 significant referral. It was a pretty significant</p> <p>4 drain on agency resources. Not just that, but also</p> <p>5 the noncitizen aspect of that 2017 audit. And I</p> <p>6 could go into lots of details about the drain on</p> <p>7 agency resources and the problems that that created</p> <p>8 with respect to federal subpoenas from the U.S.</p> <p>9 Attorney's Office.</p> <p>10 But your question was regarding</p> <p>11 collateral impacts. Yeah, so it was, you know, the</p> <p>12 fact that the audit did result in a lot of people</p> <p>13 being caught up in the investigation and referred</p> <p>14 for prosecution, when, as the audit makes quite</p> <p>15 plain, a lot of these folks didn't realize they</p> <p>16 were doing anything wrong.</p> <p>17 Q. Do you believe that this change in</p> <p>18 policy direction after this audit has, in fact,</p> <p>19 been implemented?</p> <p>20 A. Yes.</p> <p>21 Q. And how so?</p> <p>22 A. As I've testified to earlier, there</p> <p>23 have been a lot of changes in the administrative</p> <p>24 practices, in the list maintenance practices, the</p> <p>25 voting list maintenance practices, at the State</p>

<p style="text-align: right;">Page 70</p> <p>1 Board, a closer relationship with the Department of 2 Public Safety, now the Department of Adult 3 Corrections, to get the daily refreshed information 4 about the population of people serving a felony 5 sentence to ensure that anyone who is ineligible 6 for that reason is not on the voter rolls, to the 7 extent that we can. 8 And, you know, better information on 9 our -- on our website about voting while being 10 involved in the criminal justice system, better 11 information, clearer information on our 12 voter-facing forms about the eligibility 13 requirements to vote in North Carolina, including 14 the requirements with respect to felon status. And 15 I will incorporate anything else I mentioned as 16 well. 17 Q. Yeah, okay, but have the practices from 18 once a potential strict liability voting law comes 19 through the door and is reviewed by the State Board 20 at the initial stage through investigation and 21 potential referral changed as a result of the 2016 22 general election audit? 23 A. On a case-by-case basis, whether -- is 24 your question about any changes to how the State 25 Board conducts an individual investigation of</p>	<p style="text-align: right;">Page 72</p> <p>1 the county board would have knowledge of that to 2 forward it on to the State Board, also take action 3 to challenge that vote based upon ineligibility. 4 So the front-end has -- the front-end 5 process has changed in the sense that, you know, it 6 changes the way cases get initiated. 7 The actual investigative process, you 8 know, from a case getting initiated through 9 referral, I guess the main change, I would say, 10 would be that it's pretty much the standard 11 practice to interview the voter and to interview 12 their supervising agency, whether it's probation, 13 parole, or whatever else it may be, before a 14 referral is made for prosecution to develop the 15 record of the investigation. 16 Q. So what happens? 17 A. My understanding is that was not a -- a 18 standard practice prior to the audit, but it is 19 now. 20 Q. And why has it become a standard 21 practice? 22 A. Because it's -- it's relevant 23 information for the prosecuting authority. 24 Q. How so, with respect to the strict 25 liability voting law?</p>
<p style="text-align: right;">Page 71</p> <p>1 alleged voting while serving a felony sentence? 2 Q. Correct. And I will just add to that 3 how it conducts an investigation, but also what 4 decision the State Board takes with respect to 5 referral. 6 A. So -- so on the front end, a change 7 that's been made is that, you know, you don't have 8 this large influx through -- through a data match 9 of -- of cases. That was a, you know, in-house 10 generated group of cases to investigate. 11 Largely, the cases that we get of felon 12 voting now are through referrals, mostly from the 13 county boards of elections. So a county board of 14 election will determine, oh, you know, I think it 15 can have the most -- I don't know if I would say 16 most frequently -- but it could commonly occur in 17 the same-day registration window of early voting 18 where, you know, you don't have -- you don't 19 necessarily have the wherewithal on the spot to 20 determine whether someone applying to register to 21 vote at the voting site is serving a felony 22 sentence. 23 But that can be checked, and it is 24 checked, after the person registers at the early 25 voting site. And then, at that point, you know,</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Well, I don't mean to speak for any 2 prosecutors, I mean, but based upon feedback we've 3 gotten -- and you've gone through it in some 4 correspondence in Mr. Martucci's deposition -- you 5 know, there have been decisions from prosecutors to 6 decline to prosecute a particular case, despite the 7 fact that the evidence shows that the violation may 8 have occurred, because there is evidence to 9 question whether it was done intentionally, the 10 crime was committed intentionally, or knowingly. 11 And, you know, that, based upon 12 conversations and based upon those records, that, 13 you know, it appears clear that a prosecutor is 14 going to want to know that to determine whether to 15 move forward with a prosecution, because it's going 16 to factor into whether the ends of justice are 17 going to be served by a particular prosecution. 18 Q. In connection with the potential strict 19 liability voting law cases that were investigated 20 following the 2016 general election audit, are you 21 aware of instances in which an interview was not 22 conducted? 23 A. Yes. 24 Q. Okay. Why were interviews not 25 conducted?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. My understanding is that, because of</p> <p>2 the volume of investigations of felon voting in</p> <p>3 2017, there came a time when it was -- the</p> <p>4 investigative -- there weren't enough investigative</p> <p>5 resources to conduct the, you know, full work-up of</p> <p>6 these cases. So at a certain point, I believe the</p> <p>7 decision was made to just refer the cases based</p> <p>8 upon the evidence that demonstrated the elements</p> <p>9 were met and to, you know, allow the prosecutors to</p> <p>10 determine whether to move forward with those.</p> <p>11 Q. Who signed off on that decision not to</p> <p>12 conduct interviews?</p> <p>13 A. That, I don't know. I mean, at the</p> <p>14 time, 2017, you know, the investigation division</p> <p>15 wasn't under the legal counsel. The investigation</p> <p>16 division, obviously, it was -- it was under Joan</p> <p>17 Fleming, who reported directly to the executive</p> <p>18 director, who at the time was Kim Strach. And the</p> <p>19 decision would have been made between the two of</p> <p>20 them or perhaps just with Ms. Fleming.</p> <p>21 But I do know, just from conversations</p> <p>22 with former General Counsel Josh Lawson, that, you</p> <p>23 know, the investigations division thought they were</p> <p>24 being bogged down by the -- the number of these</p> <p>25 cases and that they weren't able to focus on other</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Understood, thank you.</p> <p>2 Has the State Board undertaken any</p> <p>3 analysis comparing the outcome in cases referred</p> <p>4 where an interview was conducted, compared to cases</p> <p>5 in which no interview was conducted?</p> <p>6 A. No.</p> <p>7 MR. LUNDQVIST: I'm going to introduce</p> <p>8 another exhibit. It should be available.</p> <p>9 It's Exhibit 3. It's a document titled the</p> <p>10 Post-Election Audit Report, and it's dated</p> <p>11 April 21st of 2017.</p> <p>12 (EXHIBIT 3, April 21, 2017,</p> <p>13 Post-Election Audit Report; Bates</p> <p>14 NCSBE_00098, was marked for identification.)</p> <p>15 BY MR. LUNDQVIST:</p> <p>16 Q. Do you see that document, Mr. Cox?</p> <p>17 A. Yes.</p> <p>18 Q. Is this the post-election audit report</p> <p>19 of the 2016 general election that we have been</p> <p>20 discussing here today?</p> <p>21 A. Yes.</p> <p>22 Q. Who prepared this document?</p> <p>23 A. Staff at the State Board of Elections.</p> <p>24 I believe it would have been -- the ultimate</p> <p>25 sign-off preparer -- not the ultimate sign-off, but</p>
<p style="text-align: right;">Page 75</p> <p>1 priority items.</p> <p>2 You know, one -- one -- just to name an</p> <p>3 example, there was, you know, an election fraud --</p> <p>4 there -- there were election fraud allegations</p> <p>5 coming out of Bladen County, North Carolina, in</p> <p>6 2016.</p> <p>7 And, you know, an investigation into</p> <p>8 election fraud, as opposed to voter fraud or the,</p> <p>9 you know, one-off case of illegal voting, you know,</p> <p>10 they're pretty intensive investigations. They</p> <p>11 require a lot of work.</p> <p>12 And, so, you know, I don't -- I don't</p> <p>13 think that, like, you know, the one-off felon</p> <p>14 voting cases were -- the -- well, I'll say that</p> <p>15 there were things that were a higher priority for</p> <p>16 the agency, even at that time, that, you know,</p> <p>17 could have suffered if staff were to --</p> <p>18 investigative staff were to continue to spend all</p> <p>19 of their time on felon voting cases --</p> <p>20 Q. Okay.</p> <p>21 A. -- and -- well, not just felon voting</p> <p>22 cases but noncitizen voting cases, which were</p> <p>23 all -- which were more -- I would say, probably</p> <p>24 more resource intense to investigate than the felon</p> <p>25 cases.</p>	<p style="text-align: right;">Page 77</p> <p>1 the ultimate preparer would have been general</p> <p>2 counsel and staff and the legal staff.</p> <p>3 Q. Okay. Who approved the publication of</p> <p>4 this document?</p> <p>5 A. I mean, it would have ultimately been</p> <p>6 the executive director at the time and the general</p> <p>7 counsel.</p> <p>8 Q. So if we look in the document itself,</p> <p>9 you see the first page begins with a background</p> <p>10 section. Do you see that, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And thereafter there is a summary page.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And the following page -- or I should</p> <p>16 stay on this page.</p> <p>17 Do you see the first bullet where it</p> <p>18 says, "441 open cases of voting by suspected active</p> <p>19 felons"?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And you see there are subsequent</p> <p>22 bullets that mention potential voting violations</p> <p>23 that fall into other categories, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Do you do know why the 441 open cases</p>


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<p style="text-align: right;">Page 78</p> <p>1 of voting by suspected active felons was</p> <p>2 highlighted at the top of this list?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you have any idea as to how</p> <p>5 the structure of the report itself was decided</p> <p>6 upon?</p> <p>7 A. No.</p> <p>8 Q. The document also discusses some next</p> <p>9 steps. It begins on the page Bates-stamped ending</p> <p>10 in 105. Do you see that, sir?</p> <p>11 MS. BABB: We're getting there.</p> <p>12 THE WITNESS: Yes, I see it.</p> <p>13 BY MR. LUNDQVIST:</p> <p>14 Q. And the first paragraph next to that</p> <p>15 heading, towards the middle, there is a sentence</p> <p>16 that begins, "For example, because this agency</p> <p>17 knows that many irregularities occurred, because of</p> <p>18 a lack of information and education, we know to</p> <p>19 direct our efforts to better educate registrants</p> <p>20 and those who help citizens register to vote."</p> <p>21 Do you see that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Do you believe such efforts have been</p> <p>24 put in place following the 2016 general election</p> <p>25 audit?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And does the State Board maintain any</p> <p>2 type of breakdown of cases involving the strict</p> <p>3 liability voting law where there is evidence from</p> <p>4 the voter, him or herself, that he or she acted</p> <p>5 knowingly, and instances showing the opposite,</p> <p>6 meaning that the voter did not act knowingly?</p> <p>7 MS. BABB: Objection, form.</p> <p>8 THE WITNESS: So there's no</p> <p>9 categorization -- I take that to be what</p> <p>10 your question means. There's no particular</p> <p>11 categorization of such investigations one</p> <p>12 way or the other.</p> <p>13 The information -- the evidence going</p> <p>14 toward knowledge or intent would be gathered</p> <p>15 as part of the investigative process, so</p> <p>16 that evidence would be part of the</p> <p>17 investigative file.</p> <p>18 BY MR. LUNDQVIST:</p> <p>19 Q. Are you aware, at the time the 2016</p> <p>20 general election audit was conducted, was there</p> <p>21 anyone at the State Board who disagreed with</p> <p>22 respect to whether violations of the strict</p> <p>23 liability voting law should have been included in</p> <p>24 the audit?</p> <p>25 A. I don't know.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 Q. And if we scroll up a little bit to</p> <p>3 Page 4, it's Bates-stamped ending in 102.</p> <p>4 Do you have that in front of you,</p> <p>5 Mr. Cox?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. There is a second bullet. And</p> <p>8 toward the very end of that second bullet, there is</p> <p>9 a sentence that begins with "Fixing the gap."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It says, "Fixing the gap and educating</p> <p>13 affected voters will reduce the opportunity for</p> <p>14 unintentional violations. It will also improve the</p> <p>15 likelihood of successful prosecutions against</p> <p>16 willful offenders."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree that the measures taken</p> <p>20 following the 2016 general election audit have</p> <p>21 improved the likelihood of successful prosecutions</p> <p>22 against willful offenders?</p> <p>23 A. I'm not sure. You know, in an abstract</p> <p>24 sense, it should, but I'm not sure -- I don't have</p> <p>25 any data to say one way or the other.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. How about subsequently to the audit</p> <p>2 being conducted, are you aware of anyone</p> <p>3 disagreeing with the audit's focus on potential</p> <p>4 violators of the strict liability voting law?</p> <p>5 A. So subsequent to the audit, just</p> <p>6 generally, the -- I don't know -- I can't speak for</p> <p>7 general counsel, but I can speak for my immediate</p> <p>8 predecessor, Katelyn Love, and the executive</p> <p>9 director, Karen Brinson Bell, being of the opinion</p> <p>10 that an audit such as this shouldn't be repeated in</p> <p>11 the normal course, that especially with respect</p> <p>12 to -- well, yeah, especially with respect to felon</p> <p>13 voting, that the agency's efforts should be</p> <p>14 targeted -- better targeted toward avoiding</p> <p>15 instances of the crime occurring to begin with.</p> <p>16 Q. And that is based on your discussions</p> <p>17 with Ms. Brinson Bell prior to your deposition here</p> <p>18 today?</p> <p>19 A. With her and with Katelyn Love.</p> <p>20 Q. Okay, understood.</p> <p>21 Have you discussed with Ms. Brinson</p> <p>22 Bell, separate from the question as to whether an</p> <p>23 audit focused on felony voting should be conducted,</p> <p>24 whether or not instances of potential felony voting</p> <p>25 should be investigated and potentially referred for</p>

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<p style="text-align: right;">Page 82</p> <p>1 prosecution?</p> <p>2 A. Yes, and the consensus, based upon</p> <p>3 guidance from legal counsel, has been that when</p> <p>4 such violations are referred to the State Board,</p> <p>5 that they need to be referred to prosecution under</p> <p>6 163-22(b).</p> <p>7 Q. Okay. And why is that?</p> <p>8 A. The language in that statute uses the</p> <p>9 term shall, I believe. So it's been interpreted by</p> <p>10 our legal staff as a mandatory requirement to refer</p> <p>11 any case of a violation of election laws under the</p> <p>12 jurisdiction of the State Board where the elements</p> <p>13 have been met.</p> <p>14 Q. So even if a State Board investigator</p> <p>15 did not agree or was inclined not to refer a case</p> <p>16 involving the strict liability voting law, the</p> <p>17 guidance from the legal team would be that, as long</p> <p>18 as it meets the requirements of the statute, it</p> <p>19 should be referred; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, understood.</p> <p>22 I want to direct your attention,</p> <p>23 Mr. Cox, to the last topic for which I believe you</p> <p>24 have been designated. It is Topic 8(c). Do you</p> <p>25 have that in front of you, sir?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. And the general counsel.</p> <p>2 Q. Okay. So you, separate and apart from</p> <p>3 the conversation you had -- well, strike that.</p> <p>4 Was that policy agreed between your</p> <p>5 predecessor, Ms. Love, and Ms. Brinson Bell?</p> <p>6 A. Yes.</p> <p>7 Q. Okay, understood.</p> <p>8 And you, in your current capacity, sir,</p> <p>9 have not seen any reason to revisit that policy; is</p> <p>10 that fair to say?</p> <p>11 A. No. It's fair to say I have not seen</p> <p>12 any reason to revisit that policy.</p> <p>13 Q. Understood, thank you.</p> <p>14 So fair to say, then, that no</p> <p>15 post-election audit conducted since 2017 has</p> <p>16 involved felony voting?</p> <p>17 A. Correct. There hasn't been -- as part</p> <p>18 of our standard audits -- well, as part of any of</p> <p>19 the audits after 2017, after an election, there has</p> <p>20 not been an effort to identify felon voting.</p> <p>21 Q. Is the State Board aware of voter fraud</p> <p>22 allegations in connection with the general election</p> <p>23 in 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Was there any pressure on the State</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. BABB: Do you want me to show him</p> <p>2 that?</p> <p>3 MR. LUNDQVIST: Yeah, that would be</p> <p>4 great. Thank you.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. LUNDQVIST:</p> <p>7 Q. Do you have that in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. So I believe this overlaps with what</p> <p>10 we've already discussed with respect to your</p> <p>11 discussions with Ms. Brinson Bell and Ms. Love; but</p> <p>12 just for the record, what did you do to prepare for</p> <p>13 this topic, Mr. Cox?</p> <p>14 A. I spoke with Katelyn Love and spoke</p> <p>15 with Karen Brinson Bell.</p> <p>16 Q. What did you specifically discuss with</p> <p>17 Ms. Brinson Bell?</p> <p>18 A. As I mentioned earlier, just confirming</p> <p>19 that the policy was not to repeat the audit that</p> <p>20 occurred in 2017.</p> <p>21 Q. Okay. Is that a formal policy? Has it</p> <p>22 been memorialized somewhere?</p> <p>23 A. No.</p> <p>24 Q. Okay. It's just a guideline from</p> <p>25 Ms. Brinson Bell; is that fair to say?</p>	<p style="text-align: right;">Page 85</p> <p>1 Board to conduct an audit of potential felony</p> <p>2 voting at or around the time of that election?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. How about in subsequent elections after</p> <p>5 2020?</p> <p>6 A. No.</p> <p>7 Q. Who would be involved in deciding</p> <p>8 whether or not -- well, strike that.</p> <p>9 If the State Board were to decide to</p> <p>10 conduct an audit that included potential felony</p> <p>11 voting violations, whose decision would that be?</p> <p>12 A. It could either be a decision to change</p> <p>13 general investigative focus or general audit focus</p> <p>14 by the executive director in consultation with the</p> <p>15 general counsel at the investigations division.</p> <p>16 It could also be the State Board</p> <p>17 itself, the governing body deciding that.</p> <p>18 Q. Okay. Are you aware of any discussions</p> <p>19 having been conducted by the governing body,</p> <p>20 regarding whether or not to conduct a felony voting</p> <p>21 audit?</p> <p>22 A. No.</p> <p>23 Q. Just one more question, Mr. Cox. When</p> <p>24 you mentioned the collateral impact of having</p> <p>25 conducted the 2016 audit, has the State Board also</p>

<p style="text-align: right;">Page 86</p> <p>1 considered collateral impact beyond the individuals 2 who were specifically investigated and potentially 3 referred for violations of the strict liability 4 voting law? 5 A. Yeah, I would say that, among the 6 general counsel and the executive director, there 7 was also a concern about the -- a concern about 8 whether the focus on felon voting investigations 9 could result in people who have a felony record but 10 are nonetheless eligible to vote may be confused 11 about their rights and whether they could be 12 prosecuted for voting. 13 Q. And that was a concern shared by 14 Ms. Brinson Bell and Ms. Love; is that fair to say? 15 A. And me, yes. 16 Q. And has the State Board undertaken any 17 type of analysis or research to understand whether 18 or not there is, in fact, such confusion among 19 ex-felons who are, in fact, eligible to vote under 20 the strict liability voting law? 21 MS. BABB: Objection, vague. 22 THE WITNESS: No. 23 BY MR. LUNDQVIST: 24 Q. Are you aware of any other research or 25 findings in that regard, whether or not it's been</p>	<p style="text-align: right;">Page 88</p> <p>1 the Courts in this regard. 2 I don't want to tie that directly to, 3 you know, potential confusion that may have 4 resulted. I don't know that I accept the premise 5 to that question. I just -- just to say that 6 there's, you know, a general understanding that 7 people could be confused about this and that the -- 8 you know, the direction of the agency has been to 9 try to, as much as we can, clarify what voters' 10 rights are at what stages of interaction with the 11 criminal justice system, you know, and that 12 includes all the things I mentioned before, 13 including clear information on our website, 14 forms -- all voter-facing forms, and the like. 15 Q. Other than speaking to Ms. Brinson Bell 16 about this topic in preparation for your deposition 17 here today, have you had other conversations with 18 Ms. Brinson Bell about this topic? 19 A. Can you tell me exactly what the topic 20 is? 21 Q. Well, generally the concerns you've 22 described Ms. Brinson Bell having with respect to 23 potential confusion on the part of voters that was 24 shared by Ms. Love and by you, yourself, per your 25 testimony.</p>
<p style="text-align: right;">Page 87</p> <p>1 compiled by the State Board itself? 2 A. No. And I should say, you know, it's 3 not -- I think anecdotally, we've become aware of 4 reports that voters lack information about voting 5 rights as it pertains to felon status. 6 And I should say that, you know, it's 7 not clear whether the post-election audit in 8 2017 -- we don't have evidence that it would 9 contribute to confusion. 10 It's just that, you know, 11 highlighting -- highlighting the consequences for 12 voting with a felony status could be interpreted by 13 people who don't -- misunderstand their rights 14 already and -- I'll just leave it there. 15 Q. But the State Board has not considered 16 or put out any form of communication to try to 17 offset that impression that may have been given by 18 the 2016 general election report; is that fair to 19 say? 20 A. So the State Board has definitely 21 undertaken some efforts to try to clarify to the 22 voting public what the rules are for voting while 23 serving a felony sentence, has worked with the 24 Department of Public Safety in this regard, and has 25 attempted to work with the Administrative Office of</p>	<p style="text-align: right;">Page 89</p> <p>1 I'm wondering if you have had any 2 conversations discussing that concern other than in 3 preparation for your deposition here today. 4 A. I can't answer that question because of 5 attorney/client privilege. 6 Q. Is it your position, sir, that the fact 7 of whether or not you have had such discussions is 8 a privileged matter? 9 A. I interpret your question to be asking 10 the content of a communication between a client and 11 an attorney. 12 Q. Let me see if I can try to avoid that. 13 Have you discussed the findings of the 14 2016 general election audit, as represented in a 15 public document, with Ms. Brinson Bell? 16 A. The findings of the audit report? 17 Q. Correct. 18 A. Not specifically. 19 MR. LUNDQVIST: Mr. Cox, subject to 20 whatever your counsel may ask you, I have no 21 further questions for you at this time. 22 Thank you. 23 MS. BABB: Thank you, Jacob. 24 Kathryn, do you have any questions? 25 Maybe not? I don't have any questions of</p>

<p style="text-align: right;">Page 90</p> <p>1 Mr. Cox.</p> <p>2 MR. LUNDQVIST: Okay. Should we go off</p> <p>3 the record quickly?</p> <p>4 MS. SHIELDS: I'm sorry.</p> <p>5 MR. LUNDQVIST: Oh, sorry.</p> <p>6 MS. SHIELDS: I have no questions. I</p> <p>7 was trying to talk and was muted. I have</p> <p>8 multiple screens going. I apologize.</p> <p>9 MS. BABB: That's okay. Thank you.</p> <p>10 Sorry about that.</p> <p>11 MR. LUNDQVIST: Thank you again,</p> <p>12 Mr. Cox. Why don't we go off the record.</p> <p>13 (The witness, after having been advised</p> <p>14 of his right to read and sign this</p> <p>15 transcript, does not waive that right.)</p> <p>16 (The deposition was concluded at 1:26</p> <p>17 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 92</p> <p>1 I N D E X</p> <p>2</p> <p>3 Page Line</p> <p>4</p> <p>5 PAUL COX 4 23</p> <p>6 EXAMINATION 4 25</p> <p>7 BY MR. LUNDQVIST</p> <p>8 CERTIFICATE OF REPORTER 91 1</p> <p>9</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12</p> <p>13 Page Line</p> <p>14 EXHIBIT 1 , April 19, 2023, 7 2</p> <p>15 Notice of Deposition</p> <p>16 EXHIBIT 2 , Testimony Topics 7 14</p> <p>17 EXHIBIT 3 , April 21, 2017, 76 12</p> <p>18 Post-Election Audit Report;</p> <p>19 Bates NCSBE_00098</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Susan M. Valsecchi, Registered</p> <p>4 Professional Reporter and Notary Public for</p> <p>5 the State of North Carolina at Large, do</p> <p>6 hereby certify that the foregoing transcript</p> <p>7 is a true, accurate, and complete record.</p> <p>8 I further certify that I am neither</p> <p>9 related to nor counsel for any party to the</p> <p>10 cause pending or interested in the events</p> <p>11 thereof.</p> <p>12 Witness my hand, I have hereunto</p> <p>13 affixed my official seal this 21st day of</p> <p>14 May, 2023, at Charlotte, Mecklenburg County,</p> <p>15 North Carolina.</p> <p>16</p> <p>17 </p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Susan M. Valsecchi, RPR, CRR</p> <p>24 My Commission expires</p> <p>25 June 30, 2024</p>	<p style="text-align: right;">Page 93</p> <p>1 TERENCE STEED</p> <p>2 tsteed@ncdoj.gov</p> <p>3 May 22, 2023</p> <p>4 RE: N.C. Philip Randolph Institute v. N.C. State Board Of Elections</p> <p>5 5/8/2023, Paul Cox (#5908348)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 CS-NY@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>

<div style="text-align: right;">Page 94</div> <div> 1 N.C. A. Philip Randolph Institute v. N.C. State Board Of Elections 2 Paul Cox (#5908348) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 Paul Cox Date 25 </div>	
<div style="text-align: right;">Page 95</div> <div> 1 N.C. A. Philip Randolph Institute v. N.C. State Board Of Elections 2 Paul Cox (#5908348) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, Paul Cox, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 _____ 11 _____ 12 Paul Cox Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20____. 16 _____ 17 _____ 18 _____ 19 NOTARY PUBLIC 20 21 22 23 24 25 </div>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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